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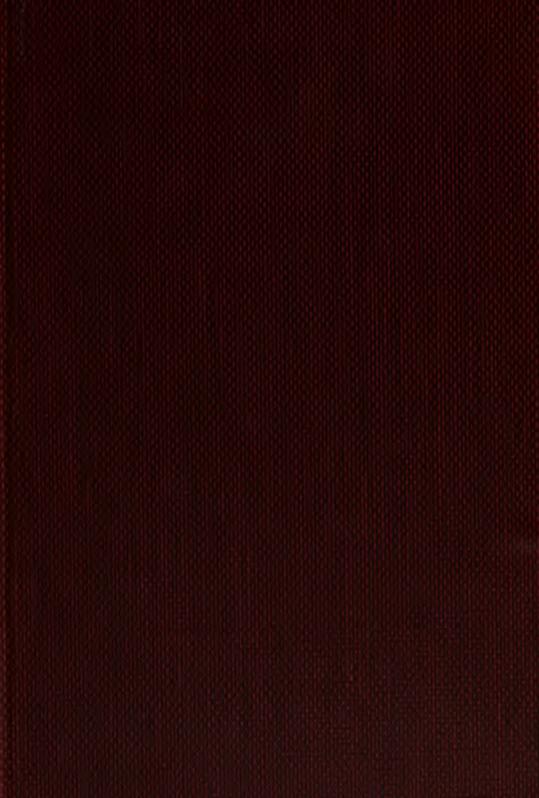
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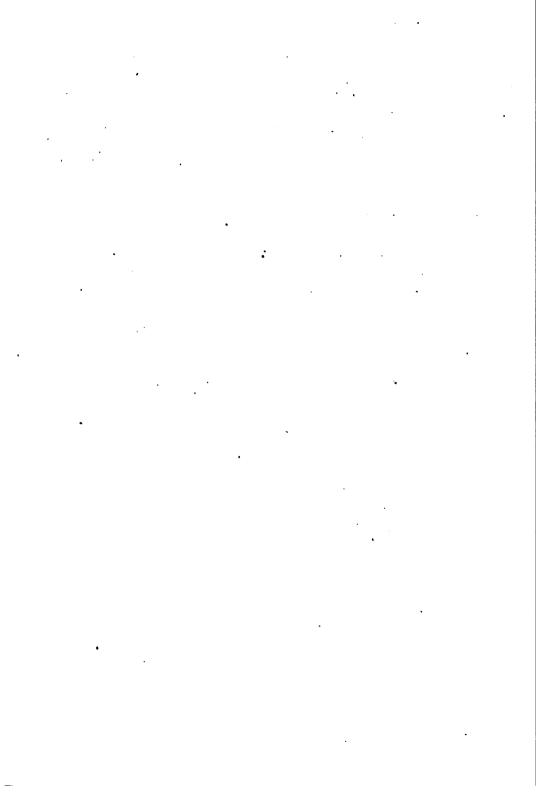
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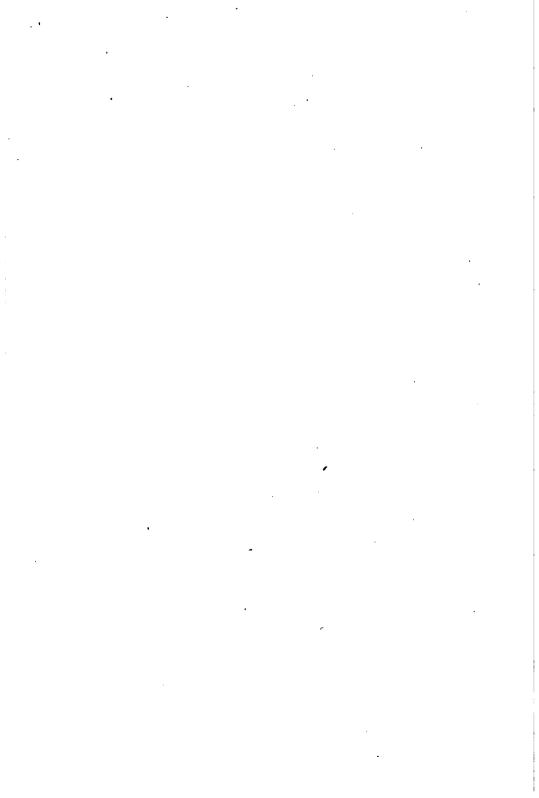
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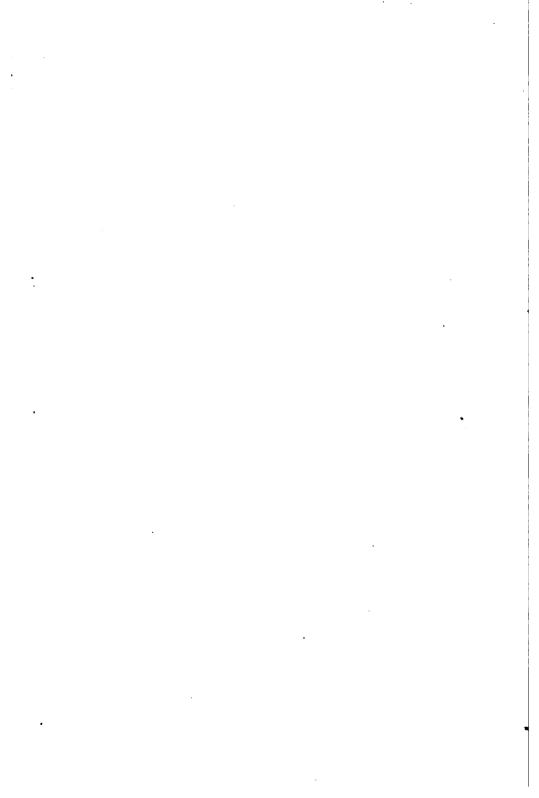




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REPORT

OF THE

FOURTH ANNUAL MEETING

OF THE

STATE BAR ASSOCIATION

UTAH.

Held at Salt Lake City.

January 11 & 12, 1897.



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J.G. Sutherland

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SALT LAKE CITY: REVIEW PUBLISHING COMPANY. 1897.

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C. S. VARIAN, J. H. MACMILLAN.

Delegates to the American Bar Association for 1894.

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SECRETARY	.CLESSON S. KINNEY.
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JAMES H. MOYLE, Chairman,

JOHN M. ZANE, Secretary,

ANDREW HOWAT,

P. L. WILLIAMS,

E. M. ALLISON.

Committee on Grievances.

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VICE-PRESIDENT Seventh Judicial District	.JACOB JOHNSON.
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TREASURER	. E. O. LEE.

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JOHN W. JUDD, P. L. WILLIAMS, JOHN M. ZANE.

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RICHARD B. SHEPARD Ex-Secretary.

Minutes of the Fourth Annual Meeting of the State Bar Association of Utah, Held January 11, 12, 1897.

Evening session, Monday January 11th, 1897, at eight o'clock p. m. The meeting was called to order by the President, Jacob S. Boreman.

President's annual address by Jacob S. Boreman.

Messrs A. B. Witcher, F. H. Holzheimer, W. J. Hills, F. M. Bishop, W. N. Sonnedecker, and Ricy H. Jones were

duly elected members of the Association.

The Executive Council reported that the banquet given by the Association last year at the close of the Annual Meeting had resulted in a deficit of \$50.00 which had been paid by Messrs John M. Zane and J. H. Moyle. It was moved and seconded that Messrs John M. Zane and J. H. Moyle be reimbursed from the treasury of the Association for the money so expended.

C. S. Varian then read a paper upon the subject: "Op-

inions of the Supreme Court in the Election Cases."

Geo. P. Costigan Jr., read a paper upon the subject:

"Trial by Jury."

The regular order of proceedings was here changed and the rest of the literary program was deferred until to-morrow evening January 12th, 1897, and the Association then proceeded to take up the business of the meeting.

A motion was made and carried to elect Judges A. G. Norrell, A. N. Cherry and W. N. Dusenberry honorary mem-

bers of the Association.

The following officers for the ensuing year were duly elected: President, Charles S. Varian. Vice-Presidents: First

President, Charles S. Varian. Vice-Presidents: First Judicial District, Judge Charles H. Hart; Second Judicial District, Judge Henry H. Rolapp; Third Judicial District,

Judge Ogden Hiles; Fourth Judicial District, Judge W. N. Dusenberry; Fifth Judicial District, Judge E. V. Higgins, Sixth Judicial District, Judge William McCarty; Seventh Judicial District, Judge Jacob Boreman. Secretary, Clesson S. Kinney; Treasurer, E. O. Lee.

Executive Council: James H. Moyle, John M. Zane;

Andrew Howat, P. L. Williams, and E. M. Allison.

Committee on grievances: J. A. Williams, A. T. Schroeder and H. E. Booth.

Delegates to the American Bar Association: John W. Judd, P. L. Williams and John M. Zane.

On motion a vote of thanks was tendered to the ex-

president Jacob S. Boreman for past services.

On motion the Association adjourned until to-morrow evening, Tuesday January 12th, 1897, at 8 o'clock p. m.

CLESSON S. KINNEY,

Secretary.

Adjourned meeting of January 12th, 1897, at 8 o'clock p. m. Meeting called to order by the President, C. S. Varian.

Mr. P. A. Dix was then duly elected a member of the Association.

The Executive Council then filed the Annual report of the Treasurer, the same having been audited and approved by them showing that there is a balance in the treasury of the sum of \$117.15.

The literary program of the evening was then taken up and was as follows:

A paper upon the subject "Admissions to the Bar," was read by Harrie K. Harkness.

A paper upon the subject "Texas & Pacific Railway Company vs. The Interstate Commerce Commission" was

read by John W. Judd.

"Divorces in America" was the subject of a paper read

by Judge Chas. H. Hart.

Grant H. Smith then addressed the meeting upon the subject "What the Code Commission has been doing."

On motion the Association then adjourned sine die. CLESSON S. KINNEY.

Secretary.

SPECIAL MEETING.

Pursuant to a call of the President, a special meeting of this Association was held on the evening of February 5th, 1897, at 8 o'clock p. m., in the court-room of Judge Hiles, in the City and County Building, in Salt Lake City.

Meeting called to order by the President, C. S. Varian. Upon motion, the meeting adjourned to meet at the Federal court-room on Monday, February 8th, 1897, at 4 o'clock p. m. CLESSON S. KINNEY, Secretary.

ADJOURNED SPECIAL MEETING.

Adjourned special meeting of the Association met on February 8th, 1897, at 4 o'clock p. m., in the old Federal court-room, in Salt Lake City. Meeting called to order by the President, C. S. Varian, who stated that the object of the meeting was to consider the advisability of certain amendments to the State Constitution more particularly as follows: 1st. Authorizing the Legislature, in its discretion, to enlarge the right of appeal to embrace applications other than those from final judgments. 2nd. Authorizing both branches of the Legislature to dispense with the first and second readings of bills. 3rd. An amendment which shall give a concluding effect to a bill which shall have been

signed by the Presiding Officers of both Houses, by the

Governor, and delivered to the Secretary of State.

The President also stated that the second object of the meeting was to consider the advisability of appointing a committee to examine the Code prepared by the Code Commission and suggest such amendments, to the members of the Legislature now in session, as may seem necessary.

On motion, the President was empowered to hereafter select a committee of two members, with power to act, to confer with the Members of the Legislature, in regard to the proposed amendments to the State Constitution; the President was also empowered to appoint a second committee of five members, having the President of the Bar Association as its chairman, for the purpose of examining the Code and suggesting amendments to the Members of the Legislature.

Motion carried to incorporate in the minutes of this Association, the resolution adopted at a general meeting of the members of the bar held this day, to take action upon the death of Walter Murphy. (Said resolution will be

found upon page 116 of this volume.)

On motion, the meeting adjourned sine die. CLESSON S. KINNEY, Secretary.

Salt Lake City, Feb. 11th, 1897.

President C. S. Varian, ef-the has this day notified me of the appointment of the following committees:

Committee on Constitutional Amendment—

F. S. Richards, W. H. Dickson.

Committee to review Code Commissioners work— Thomas Marshall, John M. Zaue, Parley Williams, James R. Williams, C. S. Varian, Chairman.

Members of the above named committees have been this day notified by the Secretary of their appointment.

CLESSON S. KINNEY, Secretary.





JACOB S. BOREMAN.

PRESIDENT'S ADDRESS.

BY J. S. BOREMAN, PRESIDENT.

Gentlemen of the Utah State Bar Association:--

It is with pleasure that I greet you at the opening of another annual gathering, and I congratulate you upon the continued existence and vigor of the Association, and upon the prospect of even a better future. The year that has just come and gone was the first in the life of this young Commonwealth. She feels proud, and has the right to feel proud, thus dressed for the first time in the habiliments of Statehood.

During the year—an historic one for Utah—changes of greatest moment have come to the community. The local government and court affairs have had complete transformation; at no time in our annals have more radical, sweeping and important changes taken place. At a bound, Utah has passed from the condition of a Territory to that of a sovereign State of this great Union. She is now upon an equal footing with every other member of the sisterhood of States, and has a voice in the government of the Nation, and likewise has been accorded full local control. Whilst this was a Territory, the laws of Congress overshadowed us; they were our charter, under the Constitution of the nation, and to them we looked for all authority and jurisdictions. Now all local subjects are covered by laws and a Constitution of

our own making, and the Statutes of Congress in such matters have ceased to operate. In the transition from a Territory to a State, new laws, new theories, new principles and new procedures, heretofore inapplicable, have met us on every hand. With our own Constitution and our own laws, offices and courts under it, there has come a corresponding increase of responsibility upon us individually for the preservation of the good order and happiness of the people, both of the State and of the Nation.

In adjusting public matters to the changed conditions, the ability, wisdom and patriotism of the people and officers have at times been sorely tested. Many intricate and momentous questions have arisen, for the correct settlement of which not only a masterly grasp of thought and great intelligence were required, but likewise a strong and steady nerve, coolness and lofty patriotism. In the midst of all these things, however, the people and all who participated in the settlement, have shown moderation, sound sense, and sagacity equal to every emergency. These qualities we anticipate will continue to mark and characterize the people of our young Commonwealth and cause her to rank high among the illustrious States of the Union.

In launching forth as an independent state, under the Constitution of the Union, we have for our local government adopted a constitution, which I deem fully abreast with the times, and it is not behind that of any other country. It no doubt has defects and possibly crudities, yet in some respects it takes a very advanced position.

It perhaps contains provisions new to constitutional law—some innovations of exceeding importance, steps upon untried paths—the full force of which is yet unknown—a simple matter of opinion. The most important and sweeping innovations are those regarding the jury system. The Constitution provides that "The Grand Jury shall consist

of seven persons, five of whom must concur to find an in-(Const. Art. I, Sec. 13.) The belief among the members of the bar, at least to some extent, is that this marked reduction in the size of the grand jury will prove to be an advance upon the old system, yet to some the test of time alone will satisfy them of its wisdom. It is no doubt true that a vast majority of criminal cases do not require investigation by a grand jury, prosecutions by information being sufficient, but there are sometimes in all communities occasions of extraordinary excitement and commotion brought about by criminal actions or charges, and when the vicious elements of society seem to combine to resist the enforcement of the law, and they assert unusual power. In such instances the advantages and necessities for a grand jury are manifest; the public are terrorized by the law-defying elements and the safety of those engaged in enforcing the law is threatened. At such times the responsibility of prosecution should be made to include a large number of citizens, that the danger may be divided and the maintenance of peace and the supremacy of the law more certainly assured. The reduction in size of the grand jury to seven persons is not in line with this principle. The naturally vicious are not, however, the only ones that may at such times endanger the public peace and the safety of those engaged in enforcing the laws; the passions of otherwise good citizens sometimes become inflamed, and men are led into extremes and resort to force and violence to shield those whom they believe to be wrongly accused or arrested for This class of men can be cooled and calmed down far more readily than the naturally vicious when they are brought to realize that the whole matter is to be investigated by a numerous body of disinterested citizens gathered from all parts of the county; and it is unquestionably true that the public generally consider that in a numerous body

of men thus drawn together in the capacity of a grand jury, there is far less liability that injustice will be done, than when the body is small. The very fact that a grand jury is provided for in any case indicates a settled conviction that investigation by a number, though small, is better and more satisfactory than prosecution by information on the complaint of one alone.

These remarks upon the subject of grand jury are somewhat speculative, and the suggested weakness of the grand jury system may never be brought to notice in practice, and I hope that such may be the case. It certainly never will be observed except in times, as I stated, of unusual

excitement.

In regard to the petit jury, the Constitution provides that "In Courts of general jurisdiction, except in capital cases, a jury shall consist of eight jurors. In Courts of inferior jurisdiction, a jury shall consist of four jurors. criminal cases, the verdict shall be unanimous. In civil cases, three fourths of the jurors may find a verdict. A jury in civil cases shall be waived unless demanded." (Const. Art. I, Sec. 10.) In the short experience of our Courts in operating under this section, its qualities have been more fully tested than those of the section regarding the grand jury, and I believe that the wisdom of its adoption has been fully justified, including all of its provisions. A limited number of the members of the bar were extremely cautious in giving their approval to this section before it had been tested, but now at the end of the first year of its operation it probably meets the unqualified support of the entire bar. At least such is the case so far as my information extends. It might be added, that all of the reductions in size of juries, both grand and petit, have greatly lessened the public expenses of the Courts, and so far as the petit jury is concerned, added efficiency to the enforcement of the laws

and to the disposal of litigation. It is likewise true that in small juries, each individual juror feels more personal responsibility resting upon him in the discharge of his duties, and it is also true that the fewer the number the greater the care in their selection. The adoption of the section as to petit jurors shows certainly that Utah is progressive and has caught the spirit of the times, looking to reform and

improvement in all ways possible.

The Constitution in Article I, Sec. 4, provides (among other things) that "no religious test shall be required as a qualification for any office of public trust or for any vote at any election," and that "there shall be no union of church and state, nor shall any church dominate the state or interfere with its functions." In consideration of the conditions theretofore existing in Utah, the adoption of these provisions was manly, heroic and thoroughly patriotic, and placed Utah at one bound in the very forefront of the best civilization of the world; it was a majestic step to thus lay the foundations of the new state upon these sublime and imperishable principles of free government. The proclaiming of them, thus honestly and frankly put forth to the world, was hailed with joy as the dawning of a glorious day, and invited the friendly offices of American citizens everywhere throughout this broad Union to aid Utah to obtain the boon of statehood: no obstructive policy was persued, the President issued his proclamation and Utah obtained her desire. I have great confidence in the people and I do not believe that they, as a whole, will disregard their solemn declaration and pledge or take any backward step upon a question so vital to the safety and peace of the state and to our honor as a people. The future will show the world that these foundation truths were enunciated in the utmost good faith and with no purpose to deceive or mislead, and they will by the people be firmly adhered to. "No religious test shall be required as

a qualification for any office," is a divine and immortal doctrine, absolutely essential in any free government and to every free people, and none can in the midst of modern civilization, when all power comes from the people, afford to

ignore it.

The Constitution in another place prohibits imprisonment for debt. This meets the progressive ideas of our day and is no doubt heartily approved by all right thinking people. The one exception made—as to absconding debtors -might, however, have been omitted and the prohibition itself been made universal. The exception is somewhat in-An absconding debtor is one who is departing clandestinely, and the words do not seem to include one who is about to depart clandestinely, nor one who departs openly. No such an one is an absconding debtor; he is not departing The tacking on of this exception to the genclandestinely. eral prohibition is perhaps simply a recognition that old theories give way to new and truer ones with great reluctance, but slowly and surely the broad American doctrine is gaining ground that all free men have the right to go where and when they please regardless of their debt en-The debts may follow them and be collected tanglements. by the regular and just processes of the law, but no such processes shall be used to restrain their honest movements when they have committed no crime. The attachment of property otherwise exempt, simply because a citizen desires to change his residence to another state and perhaps better his condition, is a violation of this just rule. common thing for men to be found who cannot succeed in one locality, but by removal to another may do so. is no sound reason why they should not be allowed to do this; they should not in justice be crippled and prevented, but on the contrary they should be aided to do so. Whatever is exempt from execution the law recognizes as necessary to enable a man to live; the fact that a man finds it advisable to change his abode is no good reason to say that in that case the goods are not necessary to enable him to live.

One provision of the Constitution has brought a result that was perhaps not anticipated by the framers of the Constitution. It prescribes that appeals shall be allowed from final judgments of the District Court to the Supreme Court. This language is held by the Supreme Court to exclude ap-The first legislature of the new state peals in other cases. did not so view the Constitutional provision, as it expressly authorized appeals in other cases. Some members of the bar coincide with the view taken by the legislature, and base their opinion upon the rule that although as to the National Constitution nothing is allowed unless it be granted in express terms or by necessary implication, yet that as to State Constitutions all power is presumed to exist in the legislature—as the direct representative of the people—that is not prohibited expressly or by necessary implication. the Supreme Court says that all other appeals are prohibited by necessary implication. It is unfortunate that the constitution was not more explicit, for the provision referred to, as interpreted by the Supreme Court, overturns a long established practice, which I believe was generally satisfactory, as litigation could often be cut short by appeals from orders that would in effect settle the whole case without the necessity of passing on to a final judgment, which frequently could not be reached for a long period. true especially in cases of injunctions and of the appointment of receivers. But it is no matter now what we may think of the provision of the constitution, the law is settled by the decisions of the Supreme Court and the bar will have to do as they are accustomed to doing, adjust themselves and the practice to the changed conditions.

One provision of the constitution is possibly a backward step. It certainly is so from my standpoint. I am rigidly in favor of the equalizing of all people as to rights and powers in the government and control of public affairs without any regard whatever to their material possessions. The obnoxious provision of the Constitution to which I refer, requires, or rather authorizes, the legislature to require a property qualification to enable a person to vote in elections levying a special tax or creating indebtedness. conceive of no valid reason or argument in favor of requiring a property qualification in such cases that cannot with equal force be applied to voting at any other election. believe in manhood voting and womanhood voting, but I cannot reconcile myself to favor property-right voting. The provision of the constitution requiring such a qualification in cases referred to is a relic of the past, a blemish upon the constitution and not suited to the progressive spirit of the times in which we live.

If, however, we take as a whole the Constitution under which we have lived for a year, it is a good one and meets the approval of the people and rests easily upon them. When this is the case, members of the bar are loathe to complain but rest content to do the best they can under the laws as they find them. Yet I believe it is a wholesome practice to now and then point out the weak as well as the strong points of our fundamental law, in order that we may all come to reflect, and when occasion requires, improve upon what we now have.

Having referred to the Constitution, I shall now call attention to some statutory provisions. I am aware that lawyers are sometimes by laymen charged with looking more to their own interest than to that of the general public when they look after or take part in legislation. Yet notwithstanding this oft repeated charge, I have no hes-

itancy in saying that as a class the members of the bar are as free from selfish motives and as broad in their views and aims as any other profession or calling. I do not say this because lawyers alone are before me, but because it is true, and among ourselves it is not out of place to sometimes call attention to what is said of us and to the injustice of it, Knowing that the members of the bar have at heart the public good, I have no hesitation in urging them to exert all the influence possible to correct errors in the law and to improve the same in all needed ways. They often, more often than any other class, have their attention called to defects, omissions and errors in the law. We sometimes hear that the wheels of the Courts move slowly, that the law is tardily administered, and the blame is cast upon the machinery of the courts, upon the procedure, and indirectly upon the members of the bar. This is another fact that would justify the lawyers in endeavoring to have the laws so framed as to facilitate the business of the Courts and to remove obstacles in the way of the dispatch of business. In this connection it seems proper that I should call attention to a matter which in one sense is small, but it interests and concerns the people generally more than the lawyers, refer to the subject of heavy court costs and charges, may be the policy of our law-makers to discourage litigation, and this may in itself be a laudable purpose, but it is not just nor right to do this by placing heavy burdens upon the weak, and thereby debarring them in a measure from seeking relief from wrongs done them,

By placing heavy court costs upon litigants, the citizens of narrow means have the doors of justice in effect closed to them; they are compelled to suffer wrong and submit to be defrauded of their rights by those who are able to bear the burdens of litigation. The only escape for the weak one, is to take the oath of poverty, and he then feels when he goes

into court that he is not on an equal footing with his antagonist. A class distinction is raised. This should be avoided whenever possible. It is now of no advantage to the officers of the law to have the allowance of high fees and charges retained in the statutes, for the officers generally have salaries under the Constitution. The voice of the bar should be heard in favor of a great reduction in the costs and charges attached to litigation, in order that all may have their rights assured to them and feel that they are all upon an equal footing in the courts of justice. know that on every occasion that a person refers to the subject of the weak as against the strong, it is characterized as demagoguery, but I have arrived at that time in life when such a charge cannot affect me. I believe that the subject of the weak and the strong demands our serious consideration. In years long gone by the laws were made and often interpreted in the interest of the strong. Since the independence of the United States, however, the tendency of legislation and interpretation of laws has been gradually going to the support of the weak, or rather to the support of the policy of equal justice to all, of every grade and race. Within a very few years past we notice with some alarm that the pendulum in legislation and interpretation of laws has been again going toward the strong. The overshadowing power of corporations and other combinations of capital has been seen and felt. For example, we are having a most wonderful use made of the writ of injunction, especially in United States Courts. "Omnibus" injunctions,—"government by injunctions,"—are words that indicate a great unrest if not alarm at the great lengths to which courts are sometimes going in granting this writ. The great proportions to which it has grown demands that a halt should be called before a crash may come. Statutes should curb the use of the writ by the Courts, State and National, and should require its refusal except upon most urgent necessity.

Likewise the matter of the appointment of receivers has taken a broad sweep and courts have gone to the very verge of their jurisdiction, if not beyond it, in the appointment of receivers. In the United States Courts the judicial power has gone so far as to even appoint receivers upon the application of the corporation itself whose property was sought to be placed in the hands of the receiver. Such a wonderful stretch of authority, in the language of a textwriter, "opens the door to gross frauds upon creditors, by enabling unscrupulous manipulators of railroad property to use the power of the United States Courts to stay the hands of creditors in pursuing their lawful remedies, and to carry on the business of the road while schemers force favorable compromises." (Beach on Receivers, Sec. 327).

There is no reason why a corporation should be granted this privilege any more than an individual, and it would be granted to no individual. To allow an individual to have a receiver appointed over his own property would be an absurdity upon its face. The conducting of railroad business and other kinds of business, by the Courts has become a common thing and of astonishing proportion. The applications for receivers are no doubt often made by those friendly to the roads, although nominally antagonistic, and by consent of the corporations. It ought to be understood that the Courts are not created to carry on business of other people, except in case of absolute necessity and for a limited time. But here we have the corporations put into the hands of receivers, yet no change is made in the management, and their possession continues for years, and thus the appointment of the receivers is simply a shield to keep off The system of appointing receivers should be radically changed, and the members of the bar should let

their voices be heard upon the subject. The powers of appointment should be restricted, and the authority for continuance should be strongly guarded. Let corporations and combinations of capital be compelled to make assignments just as individuals, and have their business wound up.

I am firmly of the belief that the bar should earnestly consider our Code of Civil Procedure. The report of the Code Commission will probably be adopted, and if so it will remain to control the practice for many years to come. is important, therefore, and I believe entirely agreeable to the Code Commission, for the bar to examine with care the various provisions as reported. Our present Code of Civil Procedure is most unsystematically and illogically arranged, and clumsy in its wording and provisions. It no doubt is the desire of the Commission, and it would be wisdom on our part to aid them to secure a code that shall be logically arranged, concisely worded and having the superfluous provisions of our present code eliminated. I learn that it is not the purpose of the Commission to have our present code overturned and an entirely new one enacted, but simply to correct and amend the present one, leaving the body of it This I believe was the only wise course to purto remain. In New York, California, and some other states their codes of civil procedure have been at times completely upturned and new ones enacted, and infinite confusion and trouble has resulted. In Missouri, where a different policy has been pursued, the result has been satisfactory. latter state, instead of upturning their code, they would correct and amend it a little at a time, as a result there has been no confusion or vexation as compared with the other states referred to.

In closing my remarks I desire to return you my thanks for the honor you conferred upon me in calling me to the position of President of the Association. I have

served you during the first year of Utah's Statehood, and

this will always be a pleasant memory to me.

Although I shall retire from this position at the close of this meeting, my interest in the Association will ever remain and I shall always be glad to learn of its prosperity and abundant success.

As a last word I desire to speak of one who is absent to-night, and we all miss him: I cannot close without referring to him. Our sympathies go out to Judge Sutherland, who was for a long time President of the Association, and took a just pride and pleasure in it. No doubt that to-night, although suffering from disease, his thoughts are of our meeting. We cannot and would not forget him, and we earnestly hope and pray that he may speedily be restored to health and vigor.

Opinions of the Supreme Court in the Election Cases.

BY CHAS. S. VARIAN.

The opinions of the Supreme Court in the election cases furnish us with another and apt illustration of the aphorism, "Law is not an exact science."

It is not the purpose, in this paper, to criticize the judgment of the Court in sustaining the legislative acts under consideration. With the result reached through the concurring, albeit diverging, views of the judges, the writer is in accord. It is with the apparent incongruities and non sequiturs of each opinion we are to deal. The petitioner, an appointee of the Governor to fill a vacany in the office of District Judge, asked for a writ of prohibition preventing the canvassing the returns of the election of his successor at the general election in November 1896.

The two acts of the legislature relative to elections mentioned in the opinions, were claimed to be in violation of the constitution for several reasons.

First; it was contended that neither act was passed in accordance with the requirements of the constitution, and in support thereof petitioner offered to prove the fact by the journals of the respective houses.

Second; it was claimed that one of the acts was in direct conflict with the express requirement of the consti-





CHAS. S. VARIAN, PRESIDENT.

tution that "All elections shall be by secret ballot" and therefore it with the election held under it were void.

Third; that the other alleged law did not conform to the constitution because the subject was not clearly expressed in the title and more than one subject was embraced in the body of the act.

Fourth; that the act of March 28th, which provides the general scheme of elections, operated unequally and ununiformily on the voters by not providing equal facilities

to all,

The third contention of the petitioner, above stated, if sound affected only his particular term of office. The others involved the validity of the general election throughout the State. The opinion of the Chief Justice was evidently intended when prepared to be the judgment of the Court, but the concurring opinion of the associate justices repudiates both reasoning and result of the first opinion upon the two propositions first stated, and consequently as to them stands as the decision of the Court, while as to the last two questions made, the concurrence of the associate justices with the views of the Chief Justice make his opinion as to them, the decision of the Court. Therefore both opinions must be read and interpreted together in order to reach an understanding of what the judgment really is,

The Chief Justice holds that the enrolled and authenticated bills, as deposited in the archives of the State, are conclusive, and that the evidence of the journals offered by petitioner to impeach their validity is imcompetent, and that the ballot provided for in the election scheme devised by the Legislature is a secret ballot, and upholds both acts upon these grounds. The majority of the Court overrule

him on both grounds.

After a learned and laborious examination of the authorities, Mr. Justice Bartch, with whom Justice Miner con-

curs, reaches the conclusion that the so called "American rule" is the better one, and therefore holds that the proffered evidence of the journals was competent to impeach the

enrolled bills, but proceeds to say;

"In this case looking to the journals there appear to be "no affimative statements recorded which conflict with the "validity of the enrolled act, and the mere silence of the "journals, as to the mandatory provision of the constitution "here in question, will not justify the holding of the act "void, because the presumption in such case that the legis-"lature proceeded properly, is conclusive." In other words the Court rules the evidence offered to be irrelevant and immaterial as not tending to prove the issue. Why, then, we may ask, decide the grave question of constitutional law presented but not necessarily involved? It is enough to defeat the petitioner upon this branch of his contention by To this it may, perexcluding his evidence as irrelevant. haps, be fairly replied, that the opinion of the Chief Justice discusses and decides the question, and therefore the majority opinion may be expected to also consider and de-But the concurring opinion, on this question, is the opinion of the Court, which, finding the evidence to be irrelevant had no occasion to pass upon the constitutional The majority decision in this particular may be justly criticized as being of no judicial value save as an indication of what the decision of the two justices upon the question will be, when, if ever, it shall be properly and neces-The only clear light sarily before the Court for decision, shining through the judicial mist is that of the unanimous judgment that these particular laws were constitutionally The Chief Justice proves it by the enrolled bills which he holds are conclusive evidence; the Associate Justices sustain their conclusion by the presumption of regularity attaching and to be made in the absence of affirmative impeaching evidence of the journals. The judgment may be considered without the rule of res Judicata, in all cases arising under these particular laws, but can not be invoked in the attempted application of the doctrine of stars decisis to other legislative acts.

Upon the second question the conclusions of the judges are diametrically opposed, yet strange to say, they are unanimous as to the result sustaining the law. The Chief Justice, while of opinion that a law better adapted to secure a secret ballot might be framed, holds the ballot provided by the act, to be a secret ballot, and that the method devised by "this law preserves legal secrecy." His conclusion that the act is constitutional, is, therefore, logical and imperative. The syllogism of his argument is;

"The constitution requires all elections to be by secret bal-

"This law provides for an election by secret ballot.

"Therefore, this law is in conformity with the constitution "and the election held under it is valid."

In the opinion of the majority, however, the ballot provided by the election law is not a secret ballot. Mr. Justice Bartch says; "The fact is that such a ballot is not secret within the meaning and intent of the constitution." And again;

"I am of opinion that so much of the Sec. 26, of the act approved March 28, 1896 as provides for the identification of the ballot is in violation of the Constitution and void."

Thereupon he proceeds to hold all the remainder of the act, and by indirection the election held in pursuance of it and by means of this unconstitutional ballot, to be valid. His syllogism therefore, is:

"The constitution requires all elections to be by secret bal-"lot.

"This law provides for an election by ballot that is "not a secret ballot.

"Therefore, this law is in conformity with the consit-

'tution, and the election held under it is valid."

This result is reached through the application of a rule of construction which is made to do like duty by the Chief Justice in his disposition of the third contention of the peti-Let the majority opinion speak for itself:

"Because, however, a small portion of an act is invalid, it "does not necessarily follow that the whole act is void. All "that portion of the act which is not repugnant to the con-"stitution is valid. While the numbering of the ballots "was improper, still that circumstance should not have the "force to void the act and overturn the election. "electors were not responsible. Their ballots were honestly "cast, and there has not been sufficient reason shown why "they should not have been so counted,"

The evident meaning of the Court is, that the ballot provided for by the act is not secret because it is required to be numbered, thereby providing for a possible disclosure of the vote given, but that the provisions relative to the numbering may be eliminated as unconstitutional, leaving all other provisions as to the ballot to stand. This reasoning is most confused and quite inadmissible in its application The rule of statutory construction to the case in hand. relied upon has its qualifications and in its entirety is stated

by Judge Cooley as follows;

"Where therefore, a part of a statute is unconstitution-"al, that fact does not authorize the courts to declare the "remainder void also, unless all the provisions are connected "in subject matter, depending on each other, operating to-"gether for the same purpose, or otherwise so connected "together in meaning that it cannot be presumed the legis-"lature would have passed the one without the other. . . .

"The point is whether they are essentially and "inseparably connected in substance. If, when the un"constitutional portion is stricken out that which remains is "complete of itself, and capable of being executed in accord"ance with the apparent legislative intent, wholly independ"ent of that which was rejected, it must be sustained." (1).

The Supreme Court of the United States have said (2) "The point to be determined in all such cases is whether "the unconstitutional provisions are so connected with the "general scope of the law as to make it impossible, if they "are stricken out, to give effect to what appears to have

"been the intent of the legislature."

The difficulty lies, not in the ascertaining of the principle but in its application. When the State government ment was organized, the existing election laws were inadequate to the needs of the people, and particularly in not providing the machinery, so to speak, for conducting the state elections. The legislature was confronted with the duty of enacting a law or laws to meet the occasion. It did devise an election scheme and incorporated it into a This scheme comprised elaborate and detailed provisions relative to the ballot to be used. The ballot was to be connected with a stub, which with its duplicate was to be numbered consecutively. It was to be printed by the government and at its expense, and is designated in the statute as an "official ballot" Sec. 18. This ballot could only be used by the voter and received by the judges in the manner and subject to the limitations prescribed by law.

Before the voter received his ballot, the initials of the clerk or judge of election must be indorsed on the duplicate stub, which was numbered, and the voter's name immediately checked on the poll list with the stub number. After the voter had prepared this ballot and was ready to vote, it was provided that he should hand the ballot to the

judge or clerk of election who should identify it with the ballot previously given by him, and write the voters name on the poll list, and number the ballot, pasting the corner thereof over the number, thereby concealing it, when, in the language of the law, "Such ballot shall then be returned "to the voter who shall thereupon , deposit the "same in the ballot box with the official endorsement of the

ballot uppormost." Sec. 26.

The ballot to be used by the voter is the one prescribed by this law, none other. None other could be received, deposited or counted. Sec. 29. To be "such ballot," when it is deposited in the box, it must have the poll list number of the voter written in the corner etc, Unless it is so numbered, it is not the ballot prescribed by the statute, and the judges may not receive it. The command of the act is; "It shall be the duty "of each and all of the judges of election "to secure the observance of the provisions of this section "and other sections relative to the duties of judges and "clerks of election." Sec. 26, And penalties for a failure to perform their duties are imposed. Sec. 36.

The law lays its mandate upon the voter also, as follows: "Every voter who does not vote or deliver in the manner "herein before provided, the ballots received by him from "the election officers, shall before leaving the polling place, "or going outside the guard rail return each such ballot to "the officer from whom he received the same. Whoever "shall violate any provision of this section shall be deemed

"guilty of a misdemeanant. Sec. 37.

In case of the failure to deliver or distribute the official ballots, or of their destruction or loss, provision is made for the use of substitute and unofficial ballots. Sec. 22.

Thus it appears that this "official ballot" is an inseparable part of the scheme of election devised by the legislature. It must be presumed the legislature intended to provide a

secret ballot, and in its endeavor to obey the mandate of the constitution this particular ballot was devised. vision for numbering of the ballot is as much a substantial part of the system as any other of its provisions, and manifestly indicates the intent of the legislature to guard against fraud. The ballot as a whole was devised for the specific purpose in view, and it will not do for the Court to say that any of the forms prescribed may be ignored. If the ballot is not secret, it is an unconstitutional ballot, and unless the illegal feature of the law is so separated and disconnected from the other provisions, that with its elimination full effect can be given to the intent of the legislature, the whole must fall. In fine, the conclusion is, that the ballot contemplated by the election law is an unconstitutional ballot, under the decision of the Court, and since it is impossible to determine that the legislature would have provided this "official ballot" without the provision for numbering, the ballot must The ballot is the very foundation of the law. cessity it is a pre-requisite to any lawful election scheme, and all the machinery of law designed for the conducting and canvassing of elections is builded and dependent upon it. If it shall fail for illegality, then the law becomes inoperative, and can only be made effective by restoring to it a constitutional ballot which shall serve to put in motion and sustain its machinery.

Passing this, however, we are confronted with still another question. The ballot which is held to be unconstitutional, was the ballot of the voters of the State at the election. It was the only vehicle through which the popular will was expressed. None other was provided—none other was used. Every officer in the State was elected, every candidate was voted for, with this ballot. The constitution says: "All elections shall be by secret ballot." This election was not by secret ballot. Hence the election was un-

lawful and in effect no election. And this, it is submitted, is true without reference to the question of sustaining the law by eliminating an illegal provision. The decision may be valuable in the future so as to enable the people to hold valid elections under the law, by omitting the numbering of But what has that to do with the past election? It was held under the statute as it is, and in compliance with all of its requirements. Manifestly, under the decision of the Court, the election was illegal, having been conducted in direct violation of the constitution. Yet, when a citizen whose rights are directly involved, pointing to the constitution, appeals to the Court for redress, he is answered; "It is true the constitution has been violated, but the law in violation can be made effective by judicial excision of some of its parts, and your prayer must be denied." But petitioner was not seeking to prevent possible infractions of the constitution in the future. He was complaining of a past violation of constitutional right, and when the Court affired his contention the ballot provided by the statute and used in the election, was an unconstitutional ballot, it would seem that the logical and necessary result must be to avoid the election, The Chief Justice, apparently with some hesitation, reached the conclusion that the ballot preserved legal secrecy and therefore complied with the constitution, thus avoiding the complication in which the majority is involved. The majority after deciding that the ballot "is not secret "within the meaning and intent of the constitution," proceed to say "that circumstance should not have the force to void the act and overturn the election." This statement, it seems to me, involves the whole question in utter confusion. The Court has already given a construction which saves the act and enables valid elections to be held in the To do this, it of necessity decided that the construction put upon the law by the election officers, in accordance with which the election was held, was erroneous and invalidated a portion of the act as being in conflict with the constitution. That the ballot was cast honestly is beside the question. Suppose the statute had provided for viva voce voting and the election had proceeded in that way? This seems to be an extreme illustration, but there are no degrees of secrecy. The ballot is either secret or it is not. If it is not, the constitution is violated and it is immaterial how or to what extent the disclosure proceeds. In the supposed case would not the suggestion in the opinion be fully met with the statement, that the intent or bona fides of the voter in exercising a constitutional privilege, could not be permitted to determine a question of constitutional law?

With all deference to the Court, it may be suggested, that, the fact that the ballots cast were unconstitutional ballots, is "sufficient reason" why they should not have been counted.

The third contention of petitioner is disposed of in the opinion of the Chief Justice. It involved a consideration of the validity of Sec. 5 of the Act of April 5, 1896, entitled "An Act relating to and making sundry provisions "concerning elections," which is as follows;

"If a vacancy occurs in the office of Judge of the Su"preme or District Court, Secretary of State, State Auditor,
"State Treasurer, Attorney-General or Superintendent of
"Public Instruction, the Governor shall appoint a person to
"hold the office until the election and qualification of a suc"cessor to fill the vacancy, which election shall take place
"at the next succeeding general election, and the person so
"elected shall hold the office for the remainder of the un"expired term."

The Chief Justice was of opinion that this section included two provisions, i. e. one for filling a vacancy by elec-

tion, and the other for an appointment of an incumbent in the meantime. This last provision, he thought, was not indicated in the title and was therefore void, But as the constitution itself provides for the appointment of an incumbent to fill a vacancy, he concluded so much of the section as related to the election might stand, and be operative in connection with the constitutional provision. The result was that the election of district judges at the general election was sustained.

This section would seem to have for its purpose but a single object, i. e. to provide for the election of a successor to an incumbent appointed to fill a vacancy. The provision relative to the appointment by the governor was not necessary to the accomplishment of such purpose, except in so far as it must be stated by way of antecedent upon which to predicate the subsequent clause relative to the election.

It was necessary, however, to refer to such appointment, and it was impossible to provide for the election of a successor, without fixing the term of the appointive in-Thus, when the statute determines the time of holding such election, it necessarily fixes the term of appointee as being from the time of his appointment and qualification until the successor provided for shall be elected and This provision under the reasoning of the Chief Justice is no more indicated by the title than the provision relative to the appointment, and must alse be invalid. will be observed that the appointee shall hold until the election of his successor "as by law provided," thus delegating the power to the legislature to determine when such election shall be had and consequently the power to fix the The two provisions may be said to declare but the one purpose of providing for an appointive incumbent and his To sustain the conclusion of the opinion it must be held, that the section has two objects in view, to wit; the

appointment of an incumbent to fill a vacancy including his term, and the election of a successor including his term. The is held to be invalid because not indicated by the title. The latter is made to stand by substituting the constitutional provision in place of the part of the law held invalid. This this result is reached by making application of the rule, that "If a statute attempts to accomplish two or more "objects, and is void as to one, it may still be in every re"spect complete and valid as to the other." (3).

Assuming that two objects are embraced in this section and that as the first, the act is broader than the title, the question remains can the remainder of the section stand after eliminating the invalid part. To reach this result, it must appear that the matter remaining "is complete in "itself, sensible, capbable of being executed and wholly in-

"dependent of that which is rejected." (4).

The whole section must fall, "unless it is manifest "the "the portion not opposed to the constitution can stand by "itself, and that in the legislative intent it was not to be "controlled or modified in its construction and effect by the

"part which is void." (5).

Applying these principles to the question it is difficult to understand how the provision relative to the election can be made to stand without referring to and relying upon the matter stricken out. The whole section constitutes but one clause. The matter relating to a vacancy and the appointment by the governor, including the term of such appointee, is the antecedent, while the enactment as to the election and term of the successor is the consequent.

The subject, is the vacancy temporarily fillied by appointment; the predicate, is the direction how such vacancy is to be permanently filled. The whole is mingled and blended together, so that it does not seem possible to conclude that the part remaining was not in the legislative in-

tent to be controlled or modified in its effect by the part which was void. This difficulty is bridged in the opinion by interpolating the constitutional provision above referred to, in place of the antecedent cut out by the judicial hand to sustain the valid part of the section. It is doubtful whether this sort of construction can be supported. A similar attempt by the Supreme Court of Utah in an early case, (6), is criticised by the learned jurist and text writer

whom I have heretofore cited. (7).

The Constitution, it is true, specifically provides for the appointment by the governor to fill a vacancy, but delegates to the legislature the duty of fixing his term and providing for the election of his successor. This the legislature endeavored to do in section 5, but failed in its entire purpose, because as the Court holds, a subject not indicated in the title is included with a subject embraced in the title. viously, this means that the two provisions are two subjects, and since two subjects can not be included in one Act, it was the duty of the legislature to have enacted a seperate law, providing for the appointment of a person to fill a vacancy and fixing his term. But the legislature did not do this. It included both matters in one law, and so connected the two together as to make one depend upon the other. The conclusion, therefore ought to be, that if one part of this section fails the other must go down with it. The consequence would be, that there being no provision by law for the election to fill the vacancy, as stated by the Chief Justice "there would be great force in the claim that such "appointee would hold until the general election in 1901 "and until the qualification of such person, or a successor after that time."

The better reason it seems to me, would hold this section to include but one purpose, i. e. to provide for the election of a person to permanently fill a vacancy. To do

this, of necessity reference must be made to what must exist before the section can take effect, that is, a vacancy filled temporarily by the Governor. When the term of such incumbent is fixed to end at the next general election, such provision relates to elections and is within the scope of the title. If the section had read "Whenever the Governor "shall have appointed a person to fill a vacancy in the office "of District Judge etc. such person shall hold until the next "general election etc. etc.", no question would probably have been made, although as before pointed out, the fixing of the appointee's term does not relate to elections, if the appointment does not. The section as written, means no more than this, and with but one general purpose which is connected with elections, it is easy to see that the details of appointment and term relate to that general purpose.

The result reached would be the same, however, and the consequences of a misapplication of principles upon the third contention are not serious. The fourth contention is adjudged by the Court, through the Chief Justice, to be without merit, although it was said, that "the system tends "to encourage the voting of straight tickets, and to dis"courage independent voting, which some of us think is an

"objection."

This disposition of the question, can hardly be claimed to involve a question of constitutional law, and we may here leave it.

As before stated, I do not take issue with the judgment of the Court on either of the questions discussed. It is with the misapplication of principles in the opinion of the majority resulting in an illogical conclusion, which principally calls for criticism. This is attempted here simply in our professional interest, and of course with none but the most appreciative and kindly feeling toward the Court. The case was of vast importance, involving as it did, the entire

election, state and county, and tremendous and possibly unforseen consequences were dependent upon its result. The decision is accepted and approved by an overwhelming majority of the people, and if we of the bar may be permitted to exercise our ingenuity in dissecting the opinions, we must remember the exceptional circumstances of the hearing, and the short time allowed in which to prepare the opinions. Nevertheless, we must challenge the opinions which in some particulars intensify conviction, either, that logic is not a science, or that "casual eclipses of the mind darken will learning."

The holding of the majority, that the journals may be resorted to for the purpose of impeaching the enrolled bill. if adhered to, may result in very disasterous consequences, Already, we may see the indications of the coming storm. From the shadow of the scaffold a convicted man appeals to the Court to release him from verdict and judgment for murder, because, as he alleges, the law, under which he was convicted, was not constitutionally enacted, and this he proposes to prove by the journals of the Senate and Assembly. To what extent the body of the statute law, and indirectly the public peace and tranquility may be involved in the future, can only be imagined.

The Court is soon to have an opportunity to again consider the question, and it may be, that upon further argument and reflection, it can see clear the way to overrule its dictum, and with the better reason and authority hold with the Chief Justice, that, when the enrolled bill, authenticated by the signatures of the respective presiding officers and the Governor, has been solemnly deposited with the Secretary of State, it is the law of the land.

NOTE.

- 1. Cooley, Constitutional Limitations, 3rd. Ed. 178.
- 2. Allen vs. Louisiana 103 U. S., 84.

3,	Cooley	constitutional	Limitations	179,	
4.	"	"	"	149.	
5,	66	66	" note	179.	
6.	Cast ve	. Cast	1st. Utah,	112.	
7.	Coolev	Constitutional	Lim.	179.	Note 2.

TRIAL BY JURY.

BY GEO, P. COSTIGAN JR.

Trial by jury is for many reasons a perennial subject in legal discussions. The jury system is one of long standing —one that has experienced many evolutionary changes one that is today undergoing a process of modification, if not transformation; and it is but natural that such an institution, which has about it much that is archaic, which at the same time exhibits to lawyers and their clients an extremely practical aspect in modern everyday litigation, and which suggests to the thoughtful citizen and political theorist that it has been a wonderful instrument in the onward march of Democracy, should always be a fruitful theme of discourse, Despite the vast amount of attention which the jury system has attracted, however, there is still a place for an intelligent review of its history and its merits, and for suggestions founded on that review, tentative though some of those suggestions must necessarily be, as to the place it should occupy in the future.

One who would discuss trial by jury understandingly must have clearly in mind the salient facts of its history.

The first thing to notice about trial by jury is that in one form or other it is an ancient institution. The better opinion among historians now is that trial by jury—using the words in a broad sense—is traceable to Charles the Great, and the Frank's. The Carolingian kings, beginning at





GEO. P. COSTIGAN, JR.

least with Charles the Great, seem to have used juries—the Frankish inquisito or inquisition—quite extensively for fiscal and judicial purposes. They introduced the sworn inquisition or inquest (which Charles the Great is supposed to have had suggested to him by the Code of the Roman Emperor, Theodosius, compiled in the 4th century) for their own advantage, and at first confined the procedure to the investigation of the King's affairs administrative and judicial; but by degrees they granted the right of inquisition to

others. (1).

The Normans derived the inquest from the Franks and carried it with them when they went to England as conquerors. Even then it still retained evidence of its Monarchical origion; for as soon as England was conquered it was used by the King as part of his system of government and of royal justice in the King's Court—the "Curia Regis"which the Norman idea of a centralization of justice in a King's court brought into being, and, being confined at first to the King's business and litigation, and the litigation of a favored few, only gradually and after many years came into use in the local courts in ordinary disputes between man Trial by jury presents, as we shall have occasion to see more fully latter on, the interesting case of an institution, encouraged if not created by a monarchy for the extension of monarchial government, transplanted from the country of its birth, where its power and even tradition gradually faded away, to become in another country a potent instrument in the production of that anti-monarchical form of government comprehensively known as a Demccracy-for England, constitutional monarchy though it is in outward show, is in essance and in fact nothing but a Democracy, and the United States which claims English ancient institutions as a birth right is of course one in form as (1). 1 Pollock & Maitland's "History of English Law." p p 119-120.

well as in fact. Though of royal origin, trial by jury came in process of time to be what it has so often been called—

the bulwark or palladium of popular liberty.

Trial by jury meant at first something very different from what it means to-day. The inquest, or inquisition, or recognition jury, as it is variously and inter-changeably called, whether used for governmental or judicial purposes, meant to the Franks and to the Normans a body of men drawn by public summons from those in the community most likely to know the truth of the matter to be investigated or in dispute—viz., those living in the neighborhood and required to state under oath what were the facts; and the use of the inquest jury came to England as an established, though as yet not fully developed, part of the Norman machinery for doing all sorts of public business. portant thing to notice about the early inquest is that the jurors were mere recognitors, declaring simply what they themselves already knew, either from their own knowledge or from tradition, to be the facts; and trial by inquest—dismissing now the question of the use of the inquest in other than purely judicial matters—was a trial in which the jury, since it went on its own knowledge, did not hear any evi-The jurors were themselves the witdence of witnesses. nesses; and trial by jury was thus at the start only trial by Despite that great difference in function bewitnesses. tween the ancient jury and the modern, however, trial by jury, even in those days, exhibited the distinguishing characteristic of the jury system, viz., that of a body of men quite distinctly marked off from the presiding officer of the court, or judge, and selected from the neighborhood to find out and declare under oath the truth in regard to disputed facts, leaving the law part to the judge.

The way in which trial by jury in the modern sense was evolved from the old trial by juror witnesses may be

briefly stated as follows (1): Even the early jurors, who were our witnesses and jurors combined, and who were selected because owing to their neighborhood residence they would have personal knowledge of the facts, must have discussed the cases of litigants with the litigants themselves in order to refresh their own recollections, and doubtless permitted the litigants, as in time they did their counsel, to address them as a jury in order to explain matters and thus to add to the information of the jurors. Then, too, the jurors would listen, and the jury as a whole would listen to persons whom litigants produced (perhaps beginning originally with the secta of the plaintiff) who could inform the jurors as to the facts of the case which in theory the jurors were supposed already to know; though there is no evidence that such persons went out with the jury. In the case of deeds with attesting witnesses, the attesting witnesses, beginning at least as early as 1208 and lasting as late as 1489, went out with the jury to give their testimony but without having any voice in the verdict; and there we begin to see the juror witnesses ceasing to be wholly witnesses and arriving at their verdicts is part at least upon the evidence given before The same in true of the early practice of showing charters and other writings to the jury as "evidence." Gradually in such ways the real jurors got differentiated from non-juror witnesses and ceased to speak wholly from their own knowledge; and gradually; too, the practice came about of permitting persons conversant with the facts and not on the jury to swear publicly under oath to the facts before the jury. Thus the jury drifted away by degrees from the primitive form of it, which as we have seen was that of a body of witnesses who tried the case by agreeing to what the facts were as they remembered them.

^{(1).} See generally Professor J. B. Thayer's "Evidence," Part I., "Development of Trial by Jury."

in process of time, those witnesses who testified under oath publicly before the witness jury were allowed to be cross-examined; and it was recognized that while the jury might not be bound by the testimony of the witnesses, yet that they had a right to believe it, and that they were the chief judges of its credibility. Later, the courts adopted the method of granting new trials when the verdicts were unreasonable on the publicly taken testimony. That last action was the great blow at the private knowledge of the jury, for the jury were then told that if any of the jurors knew anything relating to the case they ought to state it publicly in court; and at last in the 18th Century the principle became established that a juryman was not to decide on any evidence but that produced in open court, and trial by jury in the moder.

But trial by jury, in addition to being an ancient institution with an evolutionary history, is an institution which so far as England is concerned survived and grew strong simply because it was the fittest to survive of English modes of trial. When trial by jury, along with trial by combat or duel, was brought to England by the Normans, it found there in use in the Anglo-Saxon courts forms of trial that were as far inferior to it as was trial by combat itself; thoughat the same time it found in the popular nature of those courts conditions that were favorable to its own growth.

The Anglo-Saxon Courts existed at a time when the King had not yet come to be regarded as the fountain of justice—it took the vigorous centralizing ideas and power of the Norman Kings to establish a real King's court and originate that idea—and so, while the Anglo-Saxons had some sort of a King's court in the Witan, the whole Anglo-Saxon judicature centers in the local courts—those of the borough, the hundred and the shire—from which Courts there was no organized or regular appeal. Of the local

courts, those of the boroughs—i. e., those of large townships which had come to have a separate judiciary of their ownand those of the hundreds—i. e., those of territorial divisions smaller than the shire (or as we say, county), and usually made up of small townships—are the important ones: for the shire or county court, which was not even a court of appeal, besides witnessing transfers of lands and wills, seems simply to have tried such rare cases as arose between the hundreds and between persons in different hundreds, and certain exceptional cases when a man could not get justice in the hundred court. The township (tuns), though they were important units for administrative purposes, had as such no courts, but each was usually represented in the hundred court by the township reeve, priest and four men selected by the town meeting. (1). jurisdiction of the borough and of the hundred courts were similar, the borough court dealing with all ordinary civil and criminal business in the borough and the hundred court with all ordinary civil and criminal cases in the hundred except those arising in the boroughs,

The important things to notice about these Anglo-Saxon courts is that each was presided over by the chief officer of the territorial division it had jurisdiction of—the borough court by the port reeve, the hundred court by the hundred man and the shire court by the Earldorman—; that each was attended by the people in a body—the borough court by all the burgessess, i. e., by those who possessed a

(1). In the town meeting (tungemot) of the free townships of the old England of Anglo-Saxon times where the inhabitants in public gathering transacted the business of the township, was generated that freedom of debate, that ability for self government and that respect for law which centuries later found such a wonderful growth in the town meeting of the free villages of the New England of American Colonial times. To the town meeting English and American liberty owes an untold debt.

small plot of land with house and yard on it called a burgage, the hundred court by the nobles and the other free landowners of the district and also usually by the reeve, priest, and four men from each township, and the shire court by the nobles and the other free landowners of the district and probably by the priest, reeve, and four men Except in bad weather when from each township. the nearest church was generaly utilized, each court was commonly held in the open air-often on the "Moot" or assembly hill and sometimes under some sacred tree,—thereby giving publicity to judicial proceedings in an age when written records of such proceedings were not kept and because of such publicity were not felt to be needed-; that the body of the suitors—i. e., the persons above stated present in the court,—were not mere passive spectators, but, as the assembled community engaged in judicial work, gave the judgment of the Court, while the presiding officer of the court merely guided the proceedings of the court, pronounced sentence and saw that the sentence was carried out; that the judgment—i. e. the declaration of what the litigant or the alleged criminal must do or must not do came before the trial; that the modes of trial were (a) the three non-rational methods known as (1) the party's simple declaratory oath. (2) Compurgation (or wager of law), and (3) the ordeal, and [b] the four semi-rational but seldom used methods known as trial, [1] by the record, [2] by certificate, [3] by witnesses and [4] by inspection; and that the burden of proof was always on the accused in a criminal case, i. e., he had to prove that he was not guilty of the offense charged, and was on the defendant in a civil suit where he chose to defend by compurgation, i. e., he had to prove in such case that he did not owe the debt or detain the property.

The cases that came before the Anglo-Saxon courts

were mainly criminal, though the procedure in civil and criminal cases was practically the same except that in civil cases ordeal was almost never used while documentary proof and proof by the evidence of witnesses, seldom used in criminal cases, were quite common. Compurgation, the ordeal and trial by witnesses are the only modes of trial to interest us here, as they were the chief ones; and trial by witnesses we shall discuss later. As the defendants oath alone would not clear him in criminal cases, except where the presumption was that the injury was accidental, and would not be a good defence to a civil action except to an action for the recovery of a debt, the usual method of trial resorted to where the defendant was by the judgment of the court to be tried by oath was compurgation.

In compurgation, or wager of laws as it was otherwise called, the accused in a criminal case, or the defendant in a civil case in which wager of law was allowed, took a formal oath that he was innocent or did not owe the debt or detain the property, or whatever it might be, and a number of good men and true (legales homines), called oath helpers or compurgators, and selected by him either with absolute freedom of choice, or, as the case might be, from a large number of persons named by the court—the oath helpers varying in number according to the gravity of the offense, the reputation of the accused or defendant (a tyhthysig man, i. e., a notoriously bad man, having for instance to undergo threefold compurgation), and the rank of the oath helpers (one noble being equal to six non-noble freemen) swore that his oath was "clean," i. e., as later construed, that they believed him. If the compurgatory oath was taken successfully, the accused in the criminal case went free, and the defendant in the civil case escaped all liability; but if the compurgators after appearing in court refused to swear, or if the accused or the defendant

could not find oath helpers, then the accused in the criminal case had to go to the ordeal, which was the proof of last resort in criminal cases in Anglo-Saxon times, (since wager of battle, i. e., judicial combat, was unknown in England until the Normans brought it in), while in civil actions the plaintiff was entitled to what he had sued for.

The ordeal, which in certain serious crimes, such as arson, treason and witchcraft, was the only method of trial for the accused, compurgation being denied him, was regarded as the judgment of God; and the four different forms of ordeal prevailing in Anglo-Saxon times were hot and cold water, hot iron, and the holy morsel. (corsned). accused acquitted himself by carrying the hot iron, or plunging his hand in the boiling water or sinking in the cold water, successfully, or by eating the consecrated bread If the ordeal failed to acquit cheese without choking. the accused in a criminal case, he had to pay compensation (bot) for the injury to the person injured, and a fine (wite) to the State, and besides he might be deprived of his life, mutilated, outlawed, banished, drowned or hanged etc., according as his offense seemed to the assembled suitors in the court to merit the different grades of punishment. Theft was the crime which called forth the severest penalties.

Compurgation and the ordeal, then, since they were practically the only modes of trial used in criminal cases, and since criminal cases were the main business of Anglo-Saxon courts were the chief form of trial which the Normans found in England when they brought there those other forms known as judicial combat, and trial by inquest (i. e., broadly, trial by jury); and they and judicial combat were the forms which trial by jury supplanted.

Trial by inquest jury, as I have said, was introduced in England by the Normans only in the King's courts at

first, and in those courts it was used at the start only in the King's litigation, in the litigation of certain favored churches, and in other exceptional cases by virtue of the King's writ of inquest. It was under Henry II. [1154-1189] that trial by inquest first became the normal thing in a law suit and began to displace the old Anglo-Saxon modes of trial and even that other mode of trial brought in by the Normans—judicial combat; though it was not until 1819 that trial by battle was actually abolished in England by statute and not until 1833 that compurgation met a similar fate. The fact is. however, that after the England of trial by ordeal in 1215 cessation in thereabouts owing to the powerful agency the Catholic Church exerted under the decree of the Fourth Lateran Council of that year, trial by duel, attended as it was with danger to life, the expense of hiring champions, and the disgrace which accompanied defeat served to hasten the acceptance of trial by jury, as likewise did the one-sided nature of that trial by oath known as compurgation; and by the middle of the 13th Century duel and compurgation had become exceptional modes of proof, while trial by jury was the regular common law mode of trial. This change was facilitated, too, by the fact that the popular make up of the Anglo-Saxon courts, in that they, were gatherings of neighbors to see justice done, had prepared the way for the ready acceptance of trial by jury in the form of trial by juror witnesses with which it started.

Trial by jury is first mentioned in the laws England, at least in any important record in 1164 in chapter IX of the Constitution of Clarendon (1), though it was probably well established before then. By the Assize of Clarendon (2) in 1166 compurgation was abolished in ordinary criminal cases

^{(1).} Stubbs, Select Charters. Page 139,

^{(2).} Ibid Page 143.

tried in the King's court, i. e., was abolished in Crown pleas; while in Civil actions it soon came to be confined mainly to detinue and debt in which the defendant was not obliged to wage his law but could have a jury, and for which actions plaintiff had a choice of the substitute actions of assumpsit and trover which did not admit of that mode of trial. (1). Ordeal, as we have seen, ceased in England in 1215 owing to the action of the Catholic Church; while trial by combat, owing to its oppressiveness, gradually became infrequent. In place of these non-rational, one sided, superstitious, haphazard methods of trial, came trial by jury with its attempt to get at the truth of controversies mainly by human reason Trial by jury marks an epoch-makand rational evidence. ing innovation in the history of legal procedure. It was a wonderful advance to get men who before had "tried" their own cases by the ordeal or the duel, or by their own oath helpers, or, as we shall see soon, by their own witnesses who were not cross-examined, to submit to the verdict of those generally impartial witnesses selected by the Sheriff, who constituted the early jury.

Trial by jury, then, is an ancient institution which has been undergoing through the centuries of its existence a change of function that is most remarkable, and at the same time has driven out of existence the older but less desirable forms of trial of the Anglo-Saxon courts and the highly objectionable Norman trial by combat. One of those older forms of trial deserves more than passing notice, however, and that is trial by witnesses. The reason why that form of trial deserves special mention is that we find in it beginnings which might have ended in making England a civil law country had not trial by jury even in its rudimentary form proved more suitable to the English people and their

^{(1).} See Tyler's Edition of Stephen on Pleading. Appendix XXXIII and Thayer Pages 28-29.

courts.

Trial by witnesses appears to have been one of the oldest kinds of "one-sided" proof. In the old law, trial by witnessess was what we should to-day call trial by judge without a jury, with the very important exception that the witnessess were not cross-examined. No attempt was made to get the whole truth out of the witnesses, but the parties simply put them on to testify to the point and in the way they wanted and no more; and after hearing the witnesses of both parties, the judge decided which offered the more convincing testimony. That form of trial was infinitely nearer the ideal of the present Civil law than the inquest was the ideal of the present Common law, and yet the inquest carried the day; for trial by witnesses in this sense of the word seems very early to have become, and remained. confined to the proof of age, the proof of death, and the proof of property in a movable chattel. It was a case of trial by jury winning the victory over trial by judge in English history, and whether that victory came from the shirking of responsibility and work on the part of judges, as some think, (1) or, as is more likely, from the democratic instincts of the English people, certain it is that once at least in the history of English speaking people trial by jury has triumphed in the struggle of life over trial by judge. Now, after many centuries, the same struggle is again on. We shall discuss it briefly later.

But in addition to being an ancient institution with an interesting growth that has killed off worse institutions, trial by jury is accountable for all that differentiates the English Common law from the Continental Civil law, and the abandonment of trial by jury would necessarily lead to the abandonment of those differences, which are: (a) the peculiarities of Common law pleading; (b) the Common law

^{(1). 2.} Pollock & Maitland, History of English Law. Pages 624-625, 636.

technical and highly important law of evidence; (c) the Common law doctrine of judicial precedent; and (d) the existence in the Common law of equity and law as originally

separate and still partially separate systems.

First then, as to Common law pleading. Some system of pleading, i. e. some system of getting before the deciding person or body, either orally as in primitive times or in writing as in modern times, a statement of the matters in dispute in a cause, is essential to any system of law, but there have always been great differences between pleading at the Common law and pleading at the Civil law. The rules of the old Common law pleading, and in general of Code pleading in States where the Common law as modified by a Code of procedure prevails, are desigded to develop and present clearly upon the written statements of the case made by the parties, and called the pleadings, the precise point in dispute, the parties being required at Common law "to plead alternately in writing until their respective allegations of affirmation or denial terminate in a single material issue either of law or of fact, the decision of which will dispose of the cause," (1) and under the Code system to reach the same end, after complaint and answer, by amending their respective pleadings instead of pleading alternately. great aim of the Common law and of the Code pleading is to narrow down the controversy to a single, material issue; and the whole reason for this aim is and has all along been that questions of fact are to be tried by the jury and questions of law by the court, and that therefore these questions, to be decided by such different tribunals, should be separated on the record before trial in order to make the duty of each tribunal, especially in the hurry and confusion of a trial, Then, too, the jury must not be confused by having immaterial matters presented to it, while the issues them-

^{(1).} Tyler's Introduction to Stephen on Pleading. Page 15.

selves must be narrowed and simplified so that the jurors can grasp them readily; otherwise the jurors cannot decide properly. Common law special pleading, with its broad general principle that, of material matters, what ever is alleged by one party and is not expressly denied by the other is admitted by the party who does not deny, and with its insistence that all extraneous, irrelevant and immaterial matter should be excluded from the record of a case and nothing but the naked points in dispute whether of law or of fact presented distinctly to judge and jury respectively, is the great instrument by which trial by jury has been made efficient, and it is the result, not the cause, of trial by jury. Code pleading, while it has very generally abolished Common law special pleading and therefore has taken away from pleading to some extent that clearness and preciseness which the old Common law pleading displayed with perhaps too much technicality, and while it has led to an objectionable practice of pleading the evidence of facts extensively along with the facts themselves, and of filling pleadings with redundant and irrelevant matter, has nevertheless retained the rule that the material allegations of the complaint which are not expressly denied by the answer are admitted, and has the same general idea of evolving on the written record the point or points in dispute which the Common law pleading had, and therefore, as it is reasonably favorable to trial by jury, is differentiated from Civil law pleading. Code pleading is the off-spring of Common law pleading, and, like the latter, owes its peculiarities to trial by jury.

By the Civil law pleading, on the other hand, a case goes to trial with absolutely nothing admitted by the pleadings except what is expressly so admitted; and the rules of pleading make no attempt to confine the parties to a single material issue. The parties simply set forth all the facts which constitute the cause of action or defense without at-

tempting to separate questions of law from questions of fact; and then it is for the Court to rummage through the pleadings for what is worth while considering and deciding. Such a system of pleading, lacking as it does the rules of implied admissions and of implied denials in pleadings, is wholly unsuited for trial by jury, but is the result of, and

is reasonably suited to, trial by judge.

Because Civil law pleading is and was so suited to trial by judge, the English Court of Chancery, when it came into existence as a judge deciding court, adopted the Civil law pleading as it found it modified in the Ecclesiastical Courts of England. In the Court of Chancery, just as in Civil law courts, law and fact were both to be decided by the court, and therefore need not be separated on the record, especially as the Chancellor, unlike the Common law trial judge and the Common law jury who are called upon to decide questions of law and of fact respectively upon short notice, could take all necessary time to examine into the The old Equity pleading, i. e., Equity pleading where not modified by a reformed Code of Procedure, by its very difference from Common law pleading is of itself a proof that trial by jury is the cause of Common law pleading; and Code pleading itself, by its retention of the Common law pleading rule of implied admissions, and by its addition of the rule of implied denials by the plaintiff of new matter in the defendants answer, is another proof.

But in addition to being the cause of Common law pleading, trial by jury is the cause of the existence of that part of the Common law known as the law of Evidence. The wherefore is easily seen. Common law special pleading, by presenting the precise points to be determined in a cause, thereby indicated the character of the evidence required, i. e., made the relevancy of evidence easily perceived, as was indeed necessary in the case of trials of fact by men

unskilled in the law, and therefore practically incapable of ascertaining for themselves from complicated pleadings the precise issue to be decided; but even such a device for showing the jury what is important to be considered and what is not, did not suffice to overcome the fear of judges that juries might be led astray from the real issue of the case, and the judges proceeded (as they were enabled to do by the fact that the jury, as we have seen, came to hear witnesses publicly under the supervision of the judge, instead of, as originally, privately like the present grand jury), to hedge juries about by rules designed to keep from them certain dangerous kinds of evidence, or what were originally supposed to be dangerous kinds, and those rules have expanded into our law of evidence—a thing unknown to the Where, as under the Civil law systems, the judges judge of the facts as well as of the law, they hear what evidence they please; but where a tribunal, made up of twelve or any other number of men as jurors, who have no special training in logic, let alone legal discrimination, and are therefore, at least in the eyes of judges, liable to be defective in reasoning powers, is to judges of the facts, courts, besides having to keep the jury from tresspassing on the judge's domain, feel the necessity of keeping away from the jury all that will beapt in evidence to mislead the jurors by fixing their attention on immaterial matters or by prejudicing their feelings unduly against one party or the other to the action. Hence it is that, wholly owing to the peculiar composition of a jury, a complicated and technical judge made law of evidence—which has for its main purpose the exclusion, by express rules, of certain logically probative but dangerous kinds of evidential matter—has grown up in the Common law not found originally in the Civil law, and not found in Civil law countries to-day except where im-There is no law of evidence, nor any ported by statute.

thing like it, in any country where trial by jury does not exist.

Besides being the cause of Common law pleading and the law of evidence, jury trial is to my mind the cause also of the Common law doctrine of judicial precedent—a doctrine which owing to the fact that of making many law reports there is no end—will in time perhaps have to undergo a process of reconstruction, but which in some form or other is a vital part of the Common law. That doctrine of judicial precedent (1) is the rule of the Common law that, apart from its intrinsic merits as the opinion of able and learned persons, the actual decision of a court of record in a case is not only binding on the parties to the case, but has great, though not irresistibly controlling, weight as a precedent with that court and all coordinate courts in the same jurisdiction, and is absolutely binding on all inferior courts in the same jurisdiction, not only in cases precisely like the precedent, but also in cases which, however different their facts, stand on the principle established by the precedent; and jury trial has been the cause of that doctrine in two ways: (a) indirectly, (b) directly.

The indirect way has been by being the cause of Common law special pleading. We recall that Common law pleading is designed to develop and present upon the record of the case itself the precise material point or points in dispute; and that it gives certainty to trials at law by so doing, because it makes the questions to be decided clearly visible and the admission and rejection of evidence definite. But it does more than this; for, after the trial, the record of the case still shows what the point in dispute was, and in addition shows what was proved and what was adjudged, and hence enables the case to be cited to the particular point decided. No matter how loosely the opinion of the court

⁽¹⁾ Professor J. C. Gray in 9 Harvard Law Rev. Pages 36 & 40.

may be expressed, the pleadings in the case giving definiteness to the point or points decided and preserve them as a precedent for future judges to follow. Common law pleading is the source of that certainty as to points decided by cases which has led to the doctrine of judicial precedent.

The direct way that trial by jury has caused the doctrine of judicial precedent is from the fact that the judge, as the authority on the law, must charge the jury as to the law applicable to the case; and in charging juries the great desideratum has been of course to give certainty and uni-This necessity for certainty as to the law, while it has necessarily served to make the Common law judges disregard largely their personal views of the law, has also served to make them disregard the abstract opinion of emminent jurists; for the judges, in instructing jurors, deal with the application of law to particular facts, and abstract propositions are naturally of far less weight in such cases than are previous applications of such propositions to the same, or the same sort of, facts. For certainty in the guidance of the jury, therefore, judges of the Common law have always refused to recognize any legal authority as binding except the judgments of courts deliberately given in causes argued and decided; and they were enabled originally so to refuse because in England all suits were brought "before a comparatively small number of judges having their central place at Westminister" or before "the same judges on their circuits." (1).

That refusal has been freighted with tremendous consequences; and it has gained the countenance and approval it has had with English speaking people wholly because they feel it to be indispensible that rights and property should be stable, certain, and not involved in perpetual doubts and controversies, and because they feel that the

⁽¹⁾ Sir Frederick Pollock's First Book of Jurisprudence, Page 231.

doctrine of judicial precedent helps to secure the requisite uniformity and certainty. Whatever remedy we may in the future have to apply for the uncertainty which the multiplication of law reports, brought about by the doctrine of judicial precedent, furnishing so often conflicting decisions, and is now promising to cause, to the manifest decrease of that certainty which the doctrine itself tends to create, the law reports we already have as a result of that doctrine cannot be regarded, taken as a whole, otherwise than as "an inestimable possession" (1)—one traceable to trial by jury while, despite conflicting decisions, rights and property are still much more fixed and certain in Common law countries than under the Civil law.

Judicial precedent, so familiar a doctrine of the Common law, is practically unknown to the Civil law, and necessarily so, for "in the loose, detailed statements of Civil law pleadings the exact point in dispute will often be left in so much doubt that the evidence will he various, latitudinous, and vague; and many topics will be introduced at the trial which have nothing to do with the real questions in dispute" (2); and for the doctrine of judicial precedent to be of any utility, or, indeed, to have any reason for existing, exactly what has been decided must be capable of ready ascertainment from the record of the case. Under the Civil law, court decisions are considered as governing only; the particular case without establishing as a settled rule, either for the court rendering the decision or for any other court, the principle involved in the case. "Exactly speaking," says Sir Frederick Pollock, "decisions have neither more nor less authority in France, Germany or Italy at the present day than the opinions of learned persons expressed in any other form," (3) though even in those countries the

Dillon, Laws & Jurisprudence of England & America. Page 174.
 Tyler's Introduction to Stephen on Pleading. Page 17.
 "First Book of Jurisprudence. Page 230.

decisions of courts are referred to and used in the argument of cases. When a similar case to one previously decided by himself or some higher court occurs in a Civil law country, the judge may decide it according to his personal views of the law or according to the opinion of some eminent jurist, regardless of the previous case; and the consequence is that in Civil law countries the reports of decisions are of comparatively little practical effect and are relatively few, and that there is the resulting uncertainty and fluctuation of doctrine so objectionable in the Civil law.

But the most important, so far at least as the past is concerned, of the differences between the Common law and the Civil law which grew out of trial by jury, was and is that "Law" and "Equity" exist as wholly separate or partially separate systems in these countries only where trial by jury There can be no doubt that trial by jury is the cause of that phenomenon. Early in the history of the Common law it was found that the old Common law system, framed for trial by jury, was unfit for the administration of justice without jury trial, and that trial by jury—especially where speedy action was requisite in prevention or compulsion—could not serve all the requirements of justice. Hence the English Kings, through their Chancellors, introduced by degrees the independent system of Equity—a new system brought forward to supply the defects and remedy the excesses of the old Common law system, by furnishing more efficacious remedies than those then in use, and by later taking cognizance of cases for which formerly the Common law afforded no remedy. The system of Equity was not invented by the Chancellors under the spur of the occasion, but was taken by them from the equity procedure of the Roman law as modified and improved by the church courts in their Canon law, i. e., that body of laws which was evolved from the enactments of the Catholic Church

Councils and the decretals of the Pope, and which was administered in the ecclesiastical courts of mediaeval England in regard to many cases now considered strictly secular as well as in regard to purely church matters (1); and Equity was at first merely a separate and independent system of administering the same body of law or rights which the old Common law courts had administered. mon law courts could give only money damages for a wrong committed, so Equity was needed to give more substantial justice by requiring the injuring party to refrain from committing some intended wrong, or to repair a wrong already committed by doing as nearly as possible what he ought originally to have done, and by punishing him for contempt of court on refusal to obey. Equity,—which was introduced, not by the legislature but by the Chancellor acting under the prerogative which the King possessed as the fountain of justice, did not supersede trial by jury, for the reason that its jurisdiction was expressly limited to cases where trial by jury was inadequate; and that is why it does'nt follow that because one has a right of action at Common law he can sue in Equity. But Equity, so created, did not remain simply a different system of procedure from the Common law system, for, as above suggested, it became in part a different system of rights as well. It created and enforced certain rights largely unknown to the Law side of the Common law even to this day, and hence called "equitable rights," and by so doing it still further advanced justice. Introduced to soften and correct the rigor and inadequacy of the old Common law, Equity remedied matters by its radically new procedure (different almost wholly from anything known in the Roman or other systems of Civil law, or on the Law side of the Common law), and by the new equitable rights which it created; and the sole reason for (1) cf. (1) Pollock & Maitland, Pages 90-114.

Equity's existence was that the peculiar nature of trial by jury left the administration of the Common law so detective

that Equity was needed to remedy the defects.

The importance of the existence of Equity as a separate system lay in the fact that it enabled courts of Equity to evolve certain doctrines, unknown to the Civil law, yet of the highest importance to the cause of justice. Equity as a separate system in the Common law has introduced two great principles found in no other system of law, namely: the doctrine of the "Specific Performance" of contracts, and the doctrine of "Constructive Trusts." However much we in the Code States may harmonize the procedure of courts of Law and courts of Equity, and however much we may in the future, in furtherance of what we have done in the past, unite those courts in one, and even abolish as far as possible the distinction between legal and equitable rights, the fact will always remain that trial by jury caused the Law and the Equity sides of the Common law originally to be separate, and by so doing gave to the world the two new and legally precious doctrines above mentioned.

But enough has been said of the origin, development and wide spread effect of jury trial on our system of laws, while perhaps more than has already been suggested may well be said in regard to its influence in furthering the rise of the "Demos." The jury, once instituted, became a check on the absolute will of the King. Nourished by the Norman Kings for their own purposes, it gradually became transformed into an instrument of popular liberty. In the 12th Century the first great step was taken when jury trial became the normal thing in civil suits; and in the 13th Century the next was taken when it became established that the King could not convict persons of crime without the intervention of a jury. Then, beginning with Henry II, the English Kings used juries to assess taxes and they

became in the end a check on the Crown in the performance

of that governmental function.

The variety of ways in which juries were used in public affairs prepared the way for the English representative Parliament, and so for all our State legislatures as well as National Congress; for besides furnishing the people a very desirable training in a great variety of matters—judicial, fiscal, military and other,—juries contained in a crude form the idea of representation which is at the basis of all State and National legislatures. Jurors were merely the representatives of their neighbors—their community—and in the name of the community, the "country," the "pays," they tried pleas or transacted administrative duties for the Crown; and the litigant who demanded jury trial formally put himself "on the country," and the verdict was regarded as the voice of the country—of the community. By means of the jury and other crude forms of the representative idea, there gradually came about that highly important change by which, from carrying out royal enactments, the representatives of the community came to enact laws. The jury as the representative of the community in fiscal, other administrative, and judicial affairs furnished the precedent for representation in its highest as well as broadest governmental form, i. e., in legislation. The assessment of taxes by juries was a very important step toward the control of taxes by representatives in a central assembly, and the jury system needed merely extension and concentration to make it a parliament, i. e., it naturally led up to the representation of the people in a central National Assembly.

But not only by its embodiment of the representative idea did trial by jury encourage the growth of Democracy in governmental affairs, for by placing the administration of the law and the protection of property, of liberty, of reputation, and even of life in the hands of the people, it

furnished that education in self government, in responsibility for, and in opportunity to know and to reflect upon, the state of the law and the changes desirable in it, so necessary to an even growth of political power, and besides, by the same means, it fostered that love of fair play, that passion for justice, and that respect for law, so essential to government by a free people. To the town meeting and the popular courts of Anglo-Saxon times and to the jury belong all the credit for the inception of the democratic temper and judicial frame of mind of the English and American people, for those have been the great original instruments of the education of the masses in the art of self-government; and to-day trial by jury is one of the great educators of the people in politics and in morals. By obliging men to turn their attention to public justice, trial by jury "rubs off [the ordinary citizen] that private selfishness which" in the words of DeTocqueville "is the rust of society," brings home to him his relation to the organized community, helps wonderfully to form his judgment and increase his natural intelligence, develops his conscience, intensifies his love of fair play, and creates in him that respect for law which has meant and still means so much for English and American Constitutional development. While it is true that courts are organized, not to enlighten and educate citizens, but to determine the rights of litigants, still a system, such as trial by jury, which offers sufficient advantages for rationally determining the rights of litigants, and likewise serves to educate the citizen politically and morally, should be preferred to one which like trial by judge offers no such education; and especially should such a system be preferred where, as in the case of trial by jury, by requiring judges to display their knowledge or ignorance of the law on the spur of the moment before regularly recurring select bodies of their fellow citizens who must be allowed to disperse in a

reasonably short time and who will necessarily have much to do with making the judges' reputations, it furnishes a very desirable additional incentive to judges to become learned in

the law and prompt in decision.

Those who discuss practical questions that arise to-day in regard to the desirability of doing away with trial by jury or of improving it in various ways do ill to forget its ancient origin, its survival as the fittest of the older modes of trial to survive, its adaptation to the needs and spirit of a growing democracy, and its pervasive influence in, and indeed vital connection with, the Common law and all that distinguishes the Common law from the Civil law. We who exalt the Common law over the Civil law must of necessity praise trial by jury as the cause of those virtues which we commend.

There is much, however, that has in the past wrongly been regarded as essential to jury trial, such as the requirement of unanimous verdicts and the peculiar importance

placed on having twelve jurors.

We in Utah have wisely dispensed with the doctrine of the unanimity of juries in civil cases, a doctrine which was adopted in an age-about the end of the thirteenth century—and in a country—England—when and where men had not yet accepted in government or anything else the idea of that a majority should control in affairs, but ou the contrary demand unanimity. To-day we have the principle so firmly implanted in our institutions, and even made the unwritten rule of society, that when any matter is submitted to the discretion or judgment of a number of persons the opinion or action of the majority shall prevail, that the jury, too, must express it, just as the court, with its decisive (majority opinion,) already does. doing away with unanimous verdicts in civil cases, we do away very largely with "hung" juries-in the past one of the greatest objections to trial by jury. Perhaps we may

in time take one further step, as logically we ought to, and do away with the principle of unanimity in criminal cases.

Then, too, we in Utah have cut down the number of the jury. Twelve is no longer the number, even in criminal cases, except in cases punishable by death. It is a mistake to make a fetish of a particular number. The jury has not always been made up of twelve jurors, for in the 12th and 13th centuries the number of jurors in a jury varied from as low as nine to as high as forty; and it should not necessarily be made up always of twelve or any other particular number of jurors.

Then, too, we in Utah have wisely, as it seems to me, refrained from forcing juries on litigants. We make it a matter of deliberate choice for a party to call a jury; it is waived unless demanded. Jury trial should be the privilege of a litigant—his right not his duty. If he prefers to have the judge try the facts as well as determine the law, and the opposing litigant is willing, that preference should be his, though it is wrong to have that preference free from expense, while the preference of trial by jury cannot under our statutes be exercised without the payment of additional fees; and it is altogether too bad to have the decision of a judge on the facts in a Law case made, as it is by our State Constitution, more binding on appeal than the decision of the same judge in an Equity case. Indeed, for that matter, it is too bad that we have not extended the right of trial by jury to all material matters of fact in Equity cases, even though that right would probably not be extensively exercised at first. A system is irrational and artificial which commits material issues of fact now to a judge and now to a jury, with no other excuse for the difference than that the issues of fact in one case arise on the Equity side of the court and in the other on the law side.

There is much else that we in Utah have not done,

though right here let me remark that in the language of Blackstone, "I have ventured to mark these defects that the just panegyric which I have given on trial by jury might appear to be the result of sober reflection and not of enthusiasm or prejudice." (1). We have failed to limit by proper safeguards the practical exemption from jury service of desirable jurors allowed by easy going judges; we have failed to abolish the old requirement that a jury must be drawn only from the vicinage—a requirement which came into existence when jurors were witnesses, which has no reason for existence now, and which, in some counties and in some cases, unduly limits the field from which jurors can be drawn; we have failed to provide that the judge may comment on the evidence in a case and advise a jury as to their verdict, though making clear to the jurors that they are not bound by his views; and we have failed, above all things, to place the selection of jurors, where it should be placed, in the hands of commissioners appointed by the judge and acting under his guidance and supervision in the selection of jurors from the respectable; industrious, sensible, tax-paying elements of the community.

What faults there are in jury trial come not from the system itself, but mainly from the manner of selection of the jurors, and, moreover, exist chiefly in large cities where along with the other evils of municipal life the "professional juror" abounds, and the "jury fixer" is a recognized individual. It is not that intelligent jurors are not better judges of the facts than judges; for they are. Judges are usually men trained to one-sided views of cases, men who have been advocates and retain many of the non-judicial limitations of an advocate—for the judicial ermine of course does not eradicate the infirmities of the man it covers,—and besides their training in principles of law is apt to unfit them for

⁽¹⁾ Blackstone's Commentaries, Book III. *Page 385.

comprehensive discrimination in matters of fact. Many the learned judge and even practicing lawver who is unfit to apply law to facts. Judges are apt to be reversed on the facts in equity cases as often as juries are in civil; it is one thing to know the law and quite another to be able to dissect and weigh evidence properly. The decisions of judges on the facts do not give noticeably greater satisfaction in either equity or civil cases than do the verdicts of juries If we say that juries make mistakes in verin civil cases. dicts, so do judges in their decisions on matters of fact and Particularly on questions of law, for the decision of which judges are presumed to be and are especially prepared and fitted, do judges display their weakness, as the great number of reversals for wrong charges to juries and wrong views of the law evince. It has been the deliberate opinion of many of the most learned judges—and is in general the opinion of judges long on the bench—that well drawn juries are on the whole and in the long run better judges of facts than are judges; largely because, as business men, jurors are trained in deciding the kinds of questions of fact that come before courts, where the common sense of daily life rather than the special training of judges There are cases, maybe, where, owing to the known unfairness of juries in assessing damages, the legislature should perhaps provide a reasonable limitation on the amount which juries can assess, and by other devices, such as requiring special findings, prevent injustice; but, for all that, trial by jury should be preserved. Those who discuss this question are too apt to exalt unduly the qualities of judges and run down altogether too much the qualities of the ordinary citizen; and they are just as apt to forget that there are liable to be fully as many delays and miscarriages of justice in judge-tried as in jury-tried cases. men, and what is more, men drawn from a narrow classfor lawyers, since they are specialists, are as a class narrow, and are given to exalting technicality over substantial justice—and like juries they are, as a rule, no better than the They are but little freer from precommunity makes them. judice on matters of fact than jurors are; and where they are ill paid are as unsatisfactory as are ill paid jurors. Judges must be relied upon to decide the law, but the feeling of English speaking people is that in many cases we had better trust to a jury on matters of fact than to a judge. pecially is this so where the selection of judges on low salaries for short terms by popular election has placed jurors much more on an equality of intelligence, judgment, and position with judges than formerly. Besides, the decisions of judges on matters of fact "smell too much of the lamp" and are not as satisfactory to the ordinary litigant or to the public as are the verdicts of those of his and their way of life and habits of thought.

Jury trial as it exists has of course some objectionable features, and there are times when, owing to the poor character of the men drawn on a particular jury or owing to an unrighteous verdict, a lawyer feels in the language of a quaint old English statute of 1436 (1) that "great, fearless and shameless perjury horribly continues and increases daily among the common jurors of the realm;" and feels that the jury is, as it has been called "the clown of the law" and jury trial "a system of humbug;" but sober reflection reveals the error of such wholesale condemnation. Jury trial is not what it ought to be because it is not what it can be made; but he is only a foolish, irrational iconoclast who cries out, "Therefore abolish it." It is much better to find fault with trial by jury than to find an acceptable substitute for it, for we can only approximate justice at the most.

It would be strange, indeed, if the free people of Eng-

(1). St. 15, Hen. VI., c 5. See Thayer's Evidence. Pages 149-150.

land and America should abandon trial by jury for the continental system of trial by judge just as continental countries, notably France and Germany, are reaching out in their search for freedom to better their system of trial by judge by adopting by statute in part and by degrees trial by jury. We cannot so far shut our eyes to the doctrine of the relativity of institutions—the doctrine, in a word, that in the history of the world those institutions, as a general rule, that have thrived in a particular country have been the ones best adapted to the needs and capacities of the peoples that have countenanced and supported them—as to abandon trial by jury which, through an existence of almost 8 Centuries, has been found to be thoroughly in accord with the needs, ideas, traditions and democratic tendencies of English speaking people, in favor of the Civil law methods of trial that have been found so compartively well adapted to undemocratic communities. Trial by jury is a vital part of the Common law and is a democratic institution as well: and as such is, and must continue to be, sacred to English speaking people.

ADMISSION TO THE BAR.

BY HARRIE K. HARKNESS.

I have been requested to address this meeting of the State Bar Association, and as a comparatively new member and young practitioner, I have been so recently in contact with the practices and qualifications incident to the admission to the bar in Utah that I have taken for the topic of

my remarks tonight:--"Admission to the Bar."

The word "Lawyer," in the past, has been synonymous for intelligence and learning. The pages of our national history carry in more cases the honorable mention of lawyers than of any other class. The members of this association are too well posted on the history of this country for it to be necessary for me to cite names. The lawyers have been the Statesmen of the past. They are and have been the Statesmen of our generation. In fact, a distinguished member of the profession once remarked: "It is a curious fact that though there is no expressed authority therefor, in any Constitution or Statute in the land, the lawyers have always been the rulers of this nation."

Since history has shown the lawyer to be the leader of men and affairs, in the past and deservedly, does it not behoove us at this time, in view of the well-earned distinction the profession has attained, to jealously guard that distinction with such precautions as will entirely exclude the unworthy and inefficient. I believe you will agree with me

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HARRIE K. HARKNESS.

when I say that we owe this duty both to the profession and to the laymen.

From my limited knowledge of early affairs in Utah, and a comparison based on that limited knowledge with the early history of this country, I am inclined to think that conditions were in both cases practically synonymous. In short, that religious beliefs were to be dominant and worldly affairs were of necessity subservient. In such a plan of civilization the lawyer had no place. The judge is the ecclesiastic or the representative thereof. The points of difference between individuals under such circumstances becomes in fact one of degree; and the decisions by the tribunal are sure to be tempered by the material degree of combatants or expediency rather than by a strict sense of justice.

The oldest permanent English settlement in the United States was founded in 1620 at Plymouth by a band of people who were intensely devoted to their religion and whose leaders were paramount to any other earthly authority. However, the advent of those not in accord with the "roundheads" or pilgrims, as we knew them, brought about the necessity for tribunals or courts of justice for the arbitration and settlement of disputes and differences involving monetary consideration. Thus was created the first necessity for legal and judicial minds in this country. History does not record, however, that the regular practice of attorneys became common for many years.

Men who were educated in England as attorneys are, however, known to have served in this country early in its history as magistrates. Among the more prominent might be mentioned: Leechford, Winthrop, Bellingham, Humfry and probably Pelham and Bradstreet.

While not pertinent to the subject, I might mention as an illustration of the poor regard in which lawyers were

held in the early days of New England history, a rule laid down for the conduct of arguments before the court. It is as follows: "This court taking into consideration the great charge resting upon the colony, by reason of the many and tedious discourses and pleadings in the courts, both of plaintiff and defendant, as also the readiness of many to prosecute suits in law for small matters, it is therefore ordered by this court and the authority thereof, that any plaintiff or defendant shall plead by himself or his attorney for a longer time than one hour, the party that is sentenced or condemned shall pay twenty shillings for every hour so pleading more than the common fees appointed by the court for the entrance of action, to be added to the execution for the use of the country."

The rapid increase in population due to emigration, destroyed however, at an early date in our history, the ability of the ecclesiastic to direct our mundane affairs, and while the religious intolerance of the early New Englanders was manifested in the laws for many years, the necessity for a form of government involved a necessity for legal talent and the profession may be said to have had a solid

footing in this country since 1750.

No profession, however, is free from incompetents. The most disastrous effect of incompetency are probably found in the practice of medicine, as that involves life itself. The second in point of results is our own profession, involving, as it does the ever-present objects of life—property and liberty. With all due respect to our medical friends, I will say that they can cover their incompetency and we cannot.

Considering the fact that we are frequently called upon to advise as to the handling and disposition of the works of a lifetime in others as represented by estates, it is eminently just and proper that our regulations for admission to practice should be such as will effectually bar the imcompetent and deficient applicant. My intimate acquaintance with the usages and laws of Ohio governing the admission to practice shall cause me to use that as an adverse comparison with Utah.

Section 3100 of the Compiled Laws of Utah, 1888, Volume 2, page 214, does in no wayplace a safe guard as to those who may apply for admission to the bar of Utah; the requirements as contained in the section are that the applicant be a citizen of the United States, or one who has declared his intentions to become the same in the manner as required by law, and that he be over the age of twenty-one, of good moral character, and that he possesses the necessary qualifications of learning and ability. Then it states that if the applicant has the above qualifications that he is entitled to admission as an attorney and counselor in all courts of this Territory.

The most essential requirement lacking is the question of determining the amount of learning and ability the applicant must possess. As the statute states, the applicant must have the necessary qualifications of learning and ability, now what are the necessary qualifications? Should the knowledge of the applicant be compared to that of an older practitioner, or should his knowledge be compared to that of a student? The statute leaves too much for the court or examining committee to determine. The circumstances of the applicant, if they have been adverse and are known, would have a tendency to influence the court or examining committee in his favor and the examination would not be as strict as it should.

It is useless for me to argue that higher education is the need of the profession to-day, for you are too well aware of this fault and I will merely offer my suggestions as the sections should be amended. To avoid all trouble, there should be a requirement that the applicant should have studied law for the period of at least two years, and were this requirement in the statute the court or examining committee would have no grave question on their hands as to what amount of knowledge the applicant must possess, for the examination could then be conducted in a manner entirely different from the manner now in vogue. Again were this a requirement it would be a safe guard for there is no one who, if he were to study law diligently for the period of two years, would not have the necessary qualifications of learning and ability. It is true that some men are able to grasp or learn more quickly than others, but this requirement would in no way hinder the slow one from gaining admission to the bar but it would cause him to be the better qualified when he did apply.

Another fault I find with the above section is that it does not require any length of residence in this state. This is also a great error, for it offers to outsiders the same privileges as to those who are residents of this state. I do not mean that because one is not a native of Utah, that he should be required to become a resident before he could apply for admission. My contention is, that a non-resident should be compelled to prove his qualifications before he is entitled to be allowed to undergo the examination and this can only be done by having a requirement that a course of study of at least two years is necessary before one is permitted to take the examination for admission.

Section 3101 explains in a measure, what the necessary qualifications shall consist in and I say that the section in no way tends to cause one, who applies for admission to the bar, to be possessed of more than a good character, although the same section states that he must be examined in open court as to his qualifications, or by a committee appointed by the court. Now my contention in regard to this section

is the same as in regard to the previous one, in that it does not make any provision as to what his qualifications should consist of and were a course of study or length of time of study required, it could easily be understood what his qualification should be.

The latter part of the section gives the right to district courts to admit applicants upon like testimonial and examination and I think that this is also a grave error, for the district courts are courts of record and that the power of admission should lie entirely with the supreme court for many reasons, chief of which is the fact that attorneys at law are members of the most honorable profession in the land and when the power of admission is given to an inferior court, as the district court is to the supreme court, the profession is lowered in the eyes of the public for the restriction of admission cannot in any way be held as stringent as when the highest court of the state is only allowed to admit.

Section 3102 states, that when one is found qualified that the clerk of the supreme court must issue him a certificate of admission.

Section 3103 allows one because he has been admitted in another state to be admitted in this state upon proof of his former admission. I think this is also a grave mistake for several states of this union do not require any length of study as incident to admission and for this state, merely because one has been admitted elsewhere, to allow him to practice is a great mistake. A man may have been admitted elsewhere through fraud and collusion and when we grant him admission to the bar of Utah, without an examination, we not only aid indirectly that fraud, but encourage the same.

The following are the amendments to the above sections, which I offer to this Association; they will be introduced into the present Legislature by Mr. E. W. Wilson,

a member of this bar:

ATTORNEYS & COUNSELORS.—

Be it enacted by the Legislature of the State of Utah. that no person shall be permitted to practice as an attorney or counselor at law or to commence, conduct or defend any action or suit, in which he is not a party interested in any court of record within this state either by using or subscribing his own name or the name of any other person without having previously obtained a license for that purpose from the Supreme Court of Utah, which license shall constitute the person receiving the same as attorney and counselor at law, and shall authorize him to appear in all the courts of this state and therein practice as an attorney and counselor at law according to the laws and customs thereof, for and during his good behavior in said practice; and to demand and receive fees for any service he or she shall render as an attorney and counselor at law in this state. person shall be refused a license under this act on account of sex.—

Section 2.—Every applicant for admission as an attorney or counselor, except as hereinafter provided, must prior to taking an examination for admission to practice law produce satisfactory testimonials to the court.—

First.—That he or she is a citizen of the United States or have bona fide declared their intention to become one in the manner required by law.—

Second.—That they are of good moral character and

over 21 years of age.—

Third.—That he or she shall be a regular graduate from some reputable law school requiring at least an attendance of two full school years before graduation, or that said applicant shall have spent two and one half years in the study of law either in a law school or in a law office withan

attorney at law. After satisfying the court upon requirements herein provided, the applicant must undergo a strict examination in open court upon the science and practice of the law. Said examination must be conducted in person by

at least two members of the Supreme Court.—

Section 3.—If upon examination the court shall find the applicant fully qualified and competent to be an attorney and counselor at law the court shall admit him or her as such, to practice in all courts of this state and shall direct an order to be ordered to that effect, upon its record and that a certificate of such record be given him or her by the clerk of this court, which certificate shall be his or her license.—

Section 4.—The examination may be dispensed with in case of a person who has been admitted as an attorney and counselor at law in the supreme court of some other state or territory, provided, however that said state or territory from which said applicant comes, requires the same qualifications previous to admission, as herein provided for.—

Section 5.—Where an attorney or counselor at law, a resident of any other state or territory, desires to appear as an attorney in any case before any of the courts of this state, such attorney may be admitted to practice upon the same terms and in the same manner, that attorneys at law residing in this state may be admitted to practice under similar circumstances in such other state or territory.—

Section 6.—That Sections 3100, 3101, 3102 and 3103, pages 214 and 215 of Volume 2 of the Compiled Laws

of Utah be and the same are hereby appealed.

Texas & Pacific Railway vs. The Inter-State Commerce Commission.

BY JOHN W. JUDD.

The text of this paper is the case of Texas & Pacific R. R. vs. Inter-State Commerce Commission, decided by the Supreme Court of the United States, and reported in 162 U. S. at page 197.

A careful reading of the opinion of the Court will make it manifest to any thoughtful man, that if this decision shall become the established law of this country, its effects will. be of far reaching importance both upon the commercial interests of our country and the political character of our institutions.

To be a little more specific I might say, that some of the heretofore prevailing ideas of political economy amongst our people, will be modified, if not entirely changed; which will in turn modify greatly the political administration of our Government.

I am aware that when I make this statement I at once challenge criticism of what I shall say, because a people as conservative as ours, will not readily accept the idea that one decision of any Court, can have such far-reaching influence.

Before coming to a discussion of the points decided, it is proper to acquaint ourselves with the Act of Congress

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JOHN W. JUDD.

known as "An Act to regulate Commerce," which was passed Feb'y. 4, 1887.

So much of the first section as is necessary to a proper presentation of the points under discussion is as follows:—

"Be it enacted &c. That the provisions of this act shall apply to any common carrier or carriers, engaged in the transportation of passengers or property, wholly by railroad, or partly by railroad and partly by water, when both are used under a common control, management, or arrangement, for a continuous carriage or shipment from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States or the District of Columbia, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner, of property shipped from any place in the United States to a foreign country, and carried from such place to a port of transshipment, or shipped from a foreign country to any place in the United States, and carried to such place from a port of entry, either in the United States, or an adjacent foreign country.

"All charges made for any service rendered or to be rendered, in the transportation of passengers or property as aforesaid, or in connection therewith, or for the receiving, delivering, storage, or handling of such property, shall be

reasonable and just.

"And every unjust and unreasonable charge for such

service is prohibited, and declared to be unlawful."

Analysing this section we find, that its provisions apply to the transportation of any property, shipped from any place in the United States to a foreign country, and carried from such place to a port of transshipment, or shipped from

a foreign country to any place in the United States, and carried to such place from a port of entry either in the United States, or an adjacent foreign country; and to such commerce as is here mentioned, all the provisions of the act are equally as applicable as they are to commerce wholly within the United States called interstate.

So much of the second and third sections of the act as concerns this discussion is as follows:

"That if any common carrier subject to the provisions of this act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this act, than it charges, demands, collects or receives from any other person or persons for doing for him or them a like and comtemporaneous service, in the transportation of a like kind of traffic, under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful.

"Sec. 3. That it shall be unlawful for any common carrier subject to the provisions of this act to make, or give, any undue or unreasonable preference or advantage, to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

It will be seen that the second section prohibits any carrier from demanding, or receiving, a greater or less charge from one person than from another, for a like and contemporaneous service, in the transportation of a like kind of traffic, under substantially similar circumstances and conditions; and that the third section makes it unlawful for any carrier to make, or give any undue or unreasonable preference or advantages, to any particular person, company, or locality, or to any particular description of traffic; or to subject any particular person or company to any undue or unreasonable prejudice or disadvantage, in any respect whatsoever.

With this statement of the law, let us now see what the case under review is. The Texas & Pacific R. R. Co., owns a railroad, extending from the City of New Orleans through the State of Texas, to El Paso where it connects with the railroad of the Southern Pacific Company, the two roads forming a through route from the City of New Orleans, in the State of Louisiana, to the City of San Francisco, in the State of California. The Texas & Pacific R. R. Co., also has connection with other railroads and steamers, forming through freight lines from New Orleans to Memphis, St. Louis and other points, on the Missouri River, as well as elsewhere in the interior of the country.

On the 23rd of March 1889, the Interstate Commerce

Commission made the following order:—

"Imported traffic transported to any place in the United States, from a port of entry or place of reception, whether in this country or in an adjacent foreign country, is required to be taken on the inland tariff governing other freights."

Subsequently to the making of this order, complaint was made to the Interstate Commerce Commission, in a petition filed by the New York Board of Trade and Transportation, that certain railroad companies were disregarding the order above set out, and were guilty of unjust discrimination in that they were charging the regular inland tariff rates upon the property, when delivered to them at New York and Philadelphia, for transportation to Chicago and

other western points; while they were charging other persons rates which were lower, and even 50 per cent thereof, for a like and contemporaneous service, under substantially similar circumstances and conditions, when the property was delivered to them at New York or Philadelphia, by vessel or steamship line under through bills of lading from foreign ports and foreign interior points, issued under an arrangement between the said railroad companies, and such vessels and steamship lines and foreign railroads, for continuous carriage at joint rates from the point or port of shipment, to Chicago and other western points, the railroad companies share of such through rate, being lower than the regular "inland tariff" rates.

After a hearing upon this petition, the Interstate Commerce Commission made an order commanding the defendant railroad companies, to "forthwith cease and desist, from carrying any article of imported traffic, shipped from any toreign port, through any port of entry of the United States, or any port of entry in a foreign country adjacent to the United States, upon through bills of lading destined to any place within the United States, at any other than upon inland tariff covering other freight, from such port of entry, to such place of destination, or at any other than the same rates, established in such inland tariff, for the carriage of other like kind of freight, in the elements of bulk, weight, value and expense of carriage."

The Texas & Pacific Railroad Company disregarded this order, and thereupon upon the complaint of certain corporations of New York, Philadelphia and San Francisco, known as Boards of Trades or Chambers of Commerce, which were composed of merchants and traders in those cities, and engaged in the business of reaching and supplying the consumers of the United States with imported luxuries, necessities and manufactured goods generally, and

who were active competitors with the merchants of Boston, Montreal, Philadelphia, New Orleans, San Francisco, Chicago and merchants in foreign countries, who imported direct on through bills of lading issued abroad; the Interstate Commerce Commission filed a bill in the Circuit Court of the United States against the Texas & Pacific R. R. Co., and other railroads, alleging a violation of the order of the Commission before set out, and asking that they be perpetually

enjoined from doing the acts complained of.

Upon the part of the defence it sufficiently appeared, that the rates of the Texas & Pacific Railroad Co., for the transportation of commodities from Liverpool and London, England, to San Francisco, California, are in effect fixed and controlled by the competition of sailing vessels, for the entire distance; first by steamships and sailing vessels around Cape Horn, and second; by steamships and sailing vessels in connection with railroads across the Isthmus of Panama; and, third, by steamships and sailings vessels to New Orleans in the State of Louisiana, connecting these under through arrangements with the S. P. R. R. to S. Francisco; and unless the T. & P. R. R. Co., charged substantially the rates which it did, being its proportion of the through rates from L'pool & Lon. to S. F., it would be prevented by reason of the competition aforesaid, from engaging in the carrying and transportation of property and import traffic from Liverpool and London to San Francisco, and would lose the revenue derived by it therefrom, which was considerable and important and valuable to the company. The foreign or import traffic is upon orders by persons, firms and corporations in San Francisco and vicinity, buying direct of first hands in London, Liverpool and other European markets; and, if the order of the commission should be carried into effect, it would not result in the discontinuance of that practice or inducing them to buy in New Orleans. That the result of the order would be to injuriously affect the defendant company in the carriage of articles of foreign imports to Memphis, St. Louis, Kansas City, and other Missouri River points; and that the defendant company would be prevented from competing for freight, to important points in the State of Texas with the railroad system of the State, having Galveston as a receiving port, and which railroad system was not subject to the control of the Interstate Commerce Commission because it lay wholly, within said State of Texas.

It further appeared that the competition which controlled the making of rates to the Pacific Coast, is steamship by way of the Isthmus, and in cheap heavy goods around Cape Horn, and that the competition which controlled the making of rates to interior points such as Missouri River and Denver, is from the trunk lines direct from the Atlantic seaboard, and that the through bills of lading furnished a collateral, for the transportation of business, and took from the shipper and consignee both, the care as to intermediate charges, elevators, wharves, and the cost of handling, and put all this upon the carrier, and that the intermediate charges were reduced, and the transaction of business very much facilitated, and swelled the volume, and that the tendency of the through bills of lading was to eliminate the obstacles between the producer and consumer, and that much had been accomplished in that direction.

While the rates over the railroad, on goods coming from foreign ports to San Francisco, by way New Orleans. and the rates upon goods of like character from New Orleans to San Francisco, originating at New Orleans, are not set out or made to appear in the opinion of the Court, Judge Harlan in his dissenting opinion does set them out

as follows: I quote,

"The record shows that the rate in cents per hundred

pounds, charged for the transportation on through bills of lading, of books, buttons, carpets, clothing and hosiery, from Liverpool and London via New Orleans, over the Texas & Pacific R. R., and the railways of the Southern Pacific system, to San Francisco is 107; while upon the same kind of articles (carried it may be on the same train), the rate charged from New Orleans over the same railroads to San The rate in cents per hundred pounds, Francisco is 288. charged for the transportation on through bills of lading of boots and shoes, cashmeres, cigars, confectionery, cutlery, gloves, hats and caps, laces, linens, linen goods, saddlers goods, and woolen goods, from Liverpool and London via New Orleans, over the same railroads to San Francisco is 107; while upon like goods starting from New Orleans and destined for San Francisco over the same line, (it may be on the same train), the rate charged is 370."

It sufficiently appears from the foregoing statement of facts, that by reason of water and other competition, the Texas & Pacific R. R. Co., claimed the right to charge a less rate of freight, upon traffic coming from foreign ports on a through bill of lading, to interior points in our country, through a port of entry either in our country or in an adjacent foreign country, than it would charge upon goods of the same class and kind originating in our home port of entry. It also claimed that this was not "an unjust discrimination," because the "circumstances and conditions," under which the different shipments were made, were not "substantially similar."

It was claimed by the Interstate Commerce Commission, that the "circumstances and conditions," which should be considered in determing the question, of whether the Texas & Pacific R. R. Co., was guilty of "unjust discrimination," were such "circumstances and conditions," as pertained alone to the transportation of the goods from New

Orleans to San Francisco, including the competitive conditions, pertaining to that line of railroad and not any competitive conditions, arising outside of it. On the other hand the railroad company claimed that the "circumstances and conditions" which should be considered were:

1st. The competitive conditions along the whole line from the foreign port of shipment to the point of destination, and that included in this, should be considered the interests

of the carrying company:

2nd. The interests of the traders and shippers should be considered; and that in considering whether any peculiar locality was subject to an undue preference or advantage, the welfare of communities occupying the localities where the goods are to be delivered, is to be considered, as well as that of communities, which are in the locality, of the

place of shipment.

Let us now epitomize this contention and we find it to be as follows: Certain merchants in New York, Philadelphia, Boston and other Atlantic seaboard towns, where what are known as importers, that is; they imported goods from foreign markets, stored them in their warehouses, from which in turn they sold them to customers, doing business in interior points of the country. Certain other men engaged in manufacturing at the cities named, sold their goods to customers in the interior country. As competing with these, certain merchants in Chicago, Memphis, St. Louis, Kansas City and other Missouri River points, as well as Denver, in Colorado, and San Francisco in California, purchased their goods from first hands in foreign countries, and in turn supplied them to their customers, in the interior points of our country, which they could do cheaper than the first named, because they could buy them as cheap as the importer in New York, and cheaper than the manufacturer in Philadelphia could make and sell them; and, second, because of cheaper rates of freight on account of competition in ocean transportation, and the other competitive conditions heretofore mentioned.

Thus stated, the far-reaching influence and great im-

portance of this decision, can be taken in at a glance.

The necessary limits to any paper like this, could only allow a partial discussion of the subject, however interest-

ing it might be to extend it.

The Circuit Court decreed in favor of the commission, and ordered a perpetual injunction to issue, as prayed for; and the case found its way by appeal first, through the Circuit Court of Appeals, to the Supreme Court, which reversed the decision of the court below and remanded the cause, with directions to dismiss the bill. Just what the court decided may be best stated in its own language, and is as follows:

"The conclusions of the court, drawn from the history and language of the acts under consideration, and from the

decision of the English and American courts, are:

(1). That the purpose of the act is to promote and facilitate commerce by the adoption of regulations to make charges for transportation just and reasonable, and to forbid undue and unreasonable preferences or, discriminations:

(2). That in passing on questions arising under the act, the tribunal appointed to enforce its provisions, whether the Commission or the Courts, is empowered to fully consider all the circumstances and conditions that reasonably apply to the situation; and that, in the exercise of its jurisdiction, the tribunal may and should consider the legitimate interests as well of the carrying companies as of the traders and shippers, and in considering whether any particular locality is subjected to an undue preference or disadvantage, the welfare of the communities occupying the localities where the goods are delivered, is to be considered as well

as, that of the communities which are in the locality of the

place of shipment:

(3). That among the circumstances and conditions to be considered, as well in the case of traffic originating in foreign ports, as in the case of traffic originating within the limits of the United States, competition that affects rates should be considered, and in deciding whether rates and charges made at a low rate, to secure foreign freights which would otherwise go by other competitive routes, are, or are not, undue and unjust, the fair interests of the carrier companies and the welfare of the community which is to receive and consume the commodities are to be considered."

Stated briefly the court holds;

That in considering whether in any given case the charges for traffic amount to "unjust discrimination," the "circumstances and conditions" to be considered are;

1st. The legitimate interests of the carrier companies,

and,

2nd. The legitimate interests of the traders and ship-

pers.

And that in considering whether any locality has been subjected to an undue preference or disadvantage, we must consider:

1st. The welfare of the communities in the locality of where the goods are to be delivered, and,

2nd. The welfare of the communities in the locality of

the place of shipment.

That among the "circumstances and conditions," to be considered with reference to traffic originating in foreign parts, are:

1st. Competitive conditions which affect the rates upon the whole line of shipment, from the foreign port, to the place of destination, including herein the fair interests of the carrier companies, and, 2nd. The welfare of the community which is to receive and consume the commodities.

Let us now examine some of the effects of this decision.

For centuries past Europe has been and is now the Bee

Hive of the world in higher civilization, in manufacture and
in commerce.

Since the settlement of North America, the cities and states of the Atlantic slope, by reason of easy and cheap ocean transportation, have possessed an immense advantage over the cities and states of the interior in many particulars, advantages too, that the former were not slow to see and avail themselves of. Some of these advantages may be stated as follows: The merchants of the Atlantic cities, became at an early day the traders and importers of our country with foreign countries, and thus have been able not only to handle, but to control both imports and exports, and in this way, they have collected tolls on both. The manufacturer of the Atlantic cities and states, by reason of protective tariffs has had the advantage of preventing very largely, competition from abroad in the sale of his wares, and thus has made the consumer in the interior pay him a higher price.

These things considered, it is easily seen why the wealth of the country has accumulated in that part, which lies east of the Alleghenny Mountains, and north of the Potomac River. But, "it is a long lane that never turns," or, put it in another way, "the mills of the gods grind slowly,

but grind exceeding fine."

The commercial interests of the interior states have been growing at a rapid pace; railroads, the great arteries of commerce, are as numerous as were wagon roads fifty years ago; carrying vessels now cross the Atlantic ocean in days, where but two generations since it required weeks; they round Cape Horn to the western coast of North

America, and cross the Pacific Ocean from India, China and Japan, in only weeks, where but fifty years since it required months; railroads carry passengers and freight from the Atlantic Coast to Puget Sound, Portland, San Francisco and to all interior points between, and vice versa, in from one to four days, where thirty years since it required weeks and months; railroad cars are loaded at the City of Mexico and in Canada, and the traffic then hauled to interior points all over our country, and vice versa; goods are purchased by our interior merchants and traders in the open markets of the world, and at the competitive prices which those markets afford, and a through bill of lading taken to the place of destination; the goods are landed at the port of entry, and from there to their home the railroad carries them, for that proportion of the freight charge, that is allowed to it by the competitive conditions, pertaining to the whole route of shipment; the merchants, traders and manufacturers of the Atlantic States, not only are thus made to compete with the prices of the open markets of Europe on the east, but with eastern Asia, including India, China and Japan on the west; and the good part of all this is that the millions of people occupying the great interior of our country are getting the benefits. All these things and many more of like kind that could be mentioned, have operated, and are operating to bring upon us a process of readjustment, or I might call it an evening up of things, which in its turn has been for twenty years and is now lowering prices of both agricultural and manufactured products, and in turn wages are affected, hence not only have we an industrial collapse, but, not far, I fear, from an industrial crisis. That these results were fully perceived and urged upon the court is made manifest from the prevailing and dissenting opinions. In the former, in answering the argument pressed upon the court by council for the Interstate

Commerce Commission, the court replies as follows:

"Another position taken by the Commission in its report and defended in the briefs of counsel is, that it is the duty of the Commission to so construe the act to regulate commerce as to make it practically operate with what is assumed to be the policy of the tariff laws. This view is thus stated in the report of the commission.

"One paramount purpose of the act to regulate commerce manifest in all its provisions is to give to all dealers and shippers the same rates for similar services, rendered by the carriers in transporting similar freight over its line. Now, it is apparent from the evidence in this case, that many American manufacturers, dealers and localities in almost every line of manufacture and business are competitors of foreign manufacturers, dealers and localities for supplying the wants of American consumers at interior places in the United States; and that under domestic bills of lading. they seek to require from American carriers, like service as their foreign competitors, in order to place their manufactured goods, property and merchandise with interior con-The act to regulate commerce secures them this right. To deprive them of it by any course of transportation, business, or device is, to violate the statute."

"Our reading of the act" continues the court, "does not disclose any purpose or intention on the part of Congress to thereby reinforce the provisions of the tariff laws. These laws differ wholly in their objects, from the law to regulate commerce. Their main purpose is, to collect revenue with which to meet the expenditures of the Government, and those of their provisions, whereby Congress seeks to so adjust rates as to protect American manufacturers, and producers, from competition by foreign low-priced labor operate equally in all parts of the country."

"The effort of the Commission, by a rigid general order,

to deprive the inland consumers of the advantage of through rates, and to thus give an advantage to the traders and manufacturers of the large sea-board cities, seems to create the very mischief which it was one of the objects of the act to remedy."

Judge Harlan, in his dissenting opinion, speaking of the rates charged from New Orleans to San Francisco by the Texas & Pacific R. R. Co., upon freight coming on a

through bill of lading from London, says:

"These rates have been established by agreement between the railroad company, whose line, with it connections, extends from New Orleans to San Francisco, and the companies whose vessels run from Liverpool to New Orleans. And the question is presented whether the Texas & Pacific Railway Company can, consistently, with the act of Congress, charge a higher rate for the transportation of goods starting from New Orleans and destined to San Francisco than for the transportation between the same places of goods of the same kind in all the elements of bulk, weight, value and expenses of carriage, brought to New Orleans from Liverpool on a through bill of lading, and to be car-If this question be answered in the ried to San Francisco. affirmative, if all the railroad companies whose lines extend inland from the Atlantic and Pacific sea-boards indulge in like practices, and if one may do so, all may and will do so; if such discrimination by American railways having arrangements with foreign companies against goods, the product of American skill, enterprise and labor, is consistent with the acts of Congress, then the title of that act should have been one to regulate commerce to the injury of American interests, and for the benefit of foreign manufacturers and dealers."

It is here seen that not only the counsel engaged to argue this law suit, but the court itself, took up the discus-

sion of the effect of the decision upon the subject of protective economy, a subject that has so long and earnestly engaged the attention of the political department of our Government. Another thing that attracts attention is the fact that this litigation had its origin with the people on the Atlantic Coast, and was defended by railroads not only in their own interests, but in the interests of the great mass of consumers in the interior of our country.

Considerations of trade and commerce had a greater influence in bringing on secession in 1861 than most people know or think, and these considerations are now at work

in another direction.

In the Constitutional Convention of 1787, when the subject of the representation in Congress was under discussion, Mr. Morris of Pennsylvania—one of the great men of the Convention—insisted that the Constitution should fix definitely once for all the number of representatives, so as to give the States on the Atlantic Slope a majority. He said if this were not done that when States were made from the territory of the West—meaning the territory west of the Alleghanies—that the growing population would carry the majority of the representatives West, and that then their power would be used to the injury of the East. The majority of representatives are to-day in the West; the conflict of interest has come, it now remains to be seen how that power will be used by that majority.

In the opinion of the court six judges concur, and three dissent; and different people will take different views as to the correctness of the judgment of the court; the opinion of some will be controlled by their political predilections, but that of the great mass of the people, will be controlled by

their actual, or supposed interests.

I said in the outset that if this decision should become the established law of the land, that certain results must follow, I believe that the discussion in this paper has tended to support my assertion. But the question recurs; will it become the established law of the country? It may be doubted; because the forces interested in its overturn in the Atlantic States are strong both financially and politically; but the forces on the other side are also strong and numerous. They comprehend for the most part the railroads of the country, and the great mass of consumers of the United States. If the latter really understood their advantage they would make a hard struggle to hold it, but whether they will come to sense it fully before their "fatted brethren" of the "east" can "get in their work," is the question. If they do not now, they will after a while, when the "west" gets grown.

The ink was hardly dry upon the opinion of the Court, before a bill was introduced into Congress to annul its effects. We shall see what the outcome will be. May be the "east" will propose in the after-a-while to strip "the rotten boroughs of the west" of some of their representation in Congress. Not this, but a future generation must

meet that issue.





JUDGE CHAS. H. HART.

DIVORCES IN THE UNITED STATES.

BY CHAS. H. HART.

This somewhat pretentious subject was not selected in the hope of presenting in one short paper all that this general title might easily suggest; but the thought was to call attention to some of the many differences between the statutes and decisions of our several states in divorce matters, with the view of thus emphasizing the necessity of a unification of our state laws on this subject in particular.

Much has been said of late years of the evils growing out of a conflict of laws on such subjects as bills and notes, execution of wills, probate of foreign wills, succession, acknowledgements of written instruments, transfers of real property, marriage and divorce. The last subject is one of special importance. The marriage relation is the most important of all human relations. If it be desirable to know the exact nature of ones contract and property rights, how much greater is the need of knowing ones marriage status? Under the necessary but absurd fiction that every one is supposed to know the law, an otherwise innocent woman after years of supposed married life may suddenly be awakened to the realization that she is guilty of polygamy, that she has been living in adultery and that her children are illegitimate.

There is a wide divergence between the laws of European countries and those of our own states, not only on the

subject of divorce, but also on the subject of conflict of laws (an important part of which grows out of divorces). difference in conflict of laws between the American and European decisions is partly attributable to the full faith and credit rule of the Federal Constitution. In Professor Dicev's book on the Conflict of Laws he gives the English law on the subject and a brief digest of the American cases with the explanation in the preface that "This review of American cases will be, it is hoped, whilst of practical utility to American, of considerable interest to English lawyers," thus indicating the divergence between the decisions of the two countries. As to peculiarities in divorce laws on the continent, it may be noted in passing that prior to the year 1858 an absolute judicial divorce was for many years unknown to the law of England. Spain permits no divorce for any cause, neither will her judges recognize a divorce by other countries of Spanish subjects. By the law of France and also Belgium the right of, and causes for, divorce of a foreigner residing in either of those countries would depend upon the laws of his own country and not upon the laws of either of those countries where he might be actually domi-While in the United States in the absence of statute it is the well established and almost unanimously recognized rule that the right to a divorce depends upon the law of the present domicile and not upon either the place where the marriage was contracted or the place where the marital offense was committed; yet in England while there are some decisions to this effect it can not yet be said (according to Mr. Bishop) that this doctrine is now fully or fairly established in that country.

The Wutemberg-Illinois case attempted to be carried upon appeal from Illinois to the Supreme Court of the United States (see Roth vs. Ehman 107 U. S. and Roth vs. Roth 104 Ill.,) is interesting as showing the liberality

of one our states when compared with a foreign country. Subjects of Wurtemberg married in Illinois without the consent of the King. The marriage was valid in Illinois, but upon the return of the couple to Wurtemberg the marriage was annuled for want of the King's consent to the marriage. The validity of this decree then came before the courts of Illinois and the Supreme Court of that state upheld the foreign decree. Wurtemberg would not recognize an Illinois marriage but Illinois recognized the Wurtemberg divorce of the same parties.

DIVORCE STATUTES.

The divorce statutes in the different states are in many respects much alike. With the exception of South Carolina, which permits no divorce for any cause, and New York which, following the teachings of Christ on the Mount, permits absolute divorce for adultery only, and Louisiana, which divorces absolutely only for adultery and felony, the states generally authorize divorce on substantially the same grounds as in Utah. There is a great variety of language used however in naming these several grounds. This difference of language is not worthy of any extended notice Most of the states do not prescribe any length of time that the "drunkenness" or "failure to provide" must have continued or the length of time of "sentence to imprisonment" of defendant in order to authorize a divorce. Massachusetts, Michigan, Nebraska, Pennsylvania, Georgia, Vermont and Wisconsin the term of imprisonment to warrant a divorce is named at from two to five years and up-In Connecticut life imprisonment is required. The length of time of drunkenness is placed by Minnesota, Montana, North Dakota, Oregon, South Dakota and Wisconsin at one year; Nebraska and Ohio at three years and Illinois at two years. Failure to provide must have continued for

one year in Colorado, Idaho, Nevada, North and South Dakota and Wyoming. Arkansas specifies six months. The period of desertion is fixed by various states as follows: Six months, Arkansas; one year, Colorado; Idaho, dian Territory, Kansas, Kentucky, Missouri, Montana, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, Wisconsin and Wyoming; two years, Alabama, District of Columbia, Illinois, Iowa, Mississippi, Nebraska, Pennsylvania and Tennessee; and three years, Connecticut, Delaware, Maine, Maryland, Massachusetts, Minnesota, New Jersey, Vermont and West Virginia; and five years, A more interesting feature of these statutes is the length of time of residence before the plaintiff is entitled to sue for divorce. With certain exceptions in some of the states in instances where the marriage took place in the state, or the offense was committed in the state. or out of the state while the plaintiff was residing in the state, the plaintiff is required by the following states to have been a resident for the time indicated below: years, Connecticut, Georgia, Massachusetts and New Jersey; two years, Indiana, Maryland and Tennessee; one year, Alabama, Colorado, Illinois, Iowa, Kansas, Maine, Michigan, Minnesota, Missouri, Mississippi, Montana, Oregon, New Hampshire, Vermont, Washington, Virginia, West Virginia, Wisconsin and Utah; six months, Arkansas, Arizona. California, Idaho, Nebraska, Nevada, New Mexico, South Dakota and Wyoming; and ninety days (be it said to their shame), North Dakota and Oklahoma. of the wife at the time of marriage by some one other than the husband, the husband being ignorant of the fact of such pregnancy, is ground for divorce in North Carolina, Oklahoma, Tennessee, West Virginia and Wyoming. a mensa et thoro is recognized and provided for by statute in Georgia, Kentucky, Louisiana, Maryland, Michigan,

Minnesota, New York, Virginia, West Virginia and Wisconsin. A re-marriage by the guilty party is prohibited in Maryland, New York, Mississippi, Virginia, and perhaps other states. In the State of Washington the court may in its discretion grant a divorce in case of incurable or chronic mania or dementia of either party having an existence of ten years.

In view of the differences as above indicated and others too numerous to here point out, it is no wonder that some features of our divorce history has been such a scandal upon No such differences should exist. our civilization. should be a unity of law on questions of marriage and divorce if upon no others. So long as there are such disparities, so long will the temptation exist of migration for divorce with its train of attendant evils. Chancellor Green in a New Jersey case said (Winship vs. Winship 1 C. E. Green 107) "conflict of jurisdiction, injury to morals, reproach to our law, oppression and fraud, as well as abloquy to the judicature which must administer the law, are the evident consequences which must follow from the influx of parties from other states to obtain a dissolution of marriage here, in opposition to the rule of their own law."

It is remarkable that the evils of conflict of divorce laws have been so long and so patiently endured by the American people. In view of the lengthy terms of residence prescribed by most of the states as a prerequisite to a divorce suit, it should occur to all, (not excluding the inhabitants of North Dakota and Oklahoma,) that a 90 days residence is too short, and that such a period is unfair and unjust to the other states. One year is as short a time for residence as should be tolerated. Little is heard of divorce abuses from the states requiring a six months residence, but let the 90 days states change their time to one year or longer and the six months states would soon become Meccas

for divorce. There is some temptation, but no excuse, for new commonwealths to add to their population, temporarily at least, by holding out divorce inducements. Let the wealthy from other countries and states come into a small city and bring large fees for the attorneys, liberal patronage for hotels, livery stables, and all classes of business houses, and perhaps celebrate the severance of the marital cord by giving champagne suppers, with diamond souvenirs to the guests, and it is little wonder that such communities develop a strong sentiment in favor of the lax and loose divorce mill. They receive the benefits while the inhabitants of other states must suffer the consequences. While one state gets the souvenirs the other gets the widows and orphans.

With a few exceptions, however, there are not such radical and fundamental dissimilarities in this legislation as to indicate the impossibility of a compromise of all upon some uniform code. Of course South Carolina would have to give up its old fogy notion of husband and wife, "now and forever one and inseparable." New York would also have to yield considerably. The New England states would probably have to make their time of residence shorter. might compromise on a residence of eighteen months or two years. A marriage and divorce law framed by representatives of all the states would no doubt be more perfect and consistent than the present laws of any one state. For instance, it occurs to me that the provision found in only one or two states, for a divorce on the ground of insanity when incurable and of long standing might find favor with all the states if their attention were directed to the topic. Such a ground would probably take the place of some suits, not now unknown to the courts, of divorce against an insane defendant for a cause accruing prior to defendant's insanity.

A word in reference to the statuary grounds of divorce

in Utah. I do not know of any modification of the existing grounds to be recommended. I believe cases might arise under any of these provisions which would appeal as strongly to justice for a dissolution as for the crime of adul-I believe that easy divorces are not so much due to the law as to its administration. Utah has been the subject of some criticism for liberal judicial separations. partly due perhaps to the fact that, owing to conditions formerly existing in the state, divorce jurisdiction was conferred upon probate judges as authorized and permitted by the Organic Law; and partly to an early divorce law which enacted that: "If the court is satisfied that the person so applying is a resident of the territory, or wishes to become one," etc., the bonds of matrimony might be dissolved for grounds almost identical with our present statute, except there was added the following ground: "When it shall be made to appear to the satisfaction and conviction of the court that the parties cannot live in peace and union together, and that their welfare requires a separation."

That our courts were sometimes imposed upon in granting divorces under this statute to persons who were not residents of the territory and did not in good faith intend to become such, is indicated by the following decisions confirming judgments for bigamy, adultery, etc., where the defendants had re-married after securing divorces in Utah: State vs. Hood, 56 of Indiana, State vs. Armington, 26 Minnesota, State vs. Fleak, 54 Iowa, and People vs. Smith, 16th Hun. Divorces granted here were also held void for the same reason in Hardy vs. Smith, 136 Massachusetts, Litowitch vs. Litowitch, 19 Kansas, and other cases.

After the notoriety Oklahoma has received as being for divorces in America what Gret Green was once in Great Britain for marriages, it is interesting to read the recent case from that territory of Beach vs. Beach, (46 Pac. Rep.) The case is instructive as showing what desperate chances will be taken even by one of high professional standing to defraud the courts in this class of cases. Charles Fisk Beach jr., the plaintiff, is no doubt well known to all present as a legal author of some prominence in this country. His petition for divorce was based upon the statutory grounds of extreme cruelty and neglect of duty. The case was tried before Judge Scott and a decree granted the plaintiff. From the review of the evidence given by the Supreme Court in their intensely interesting opinion, one is lead to wonder how the lower court ever came to grant a decree in such a case.

As to his residence in the Territory the following is ex-

tracted from the opinion of the court:

"The record shows that on the 5th day of April, 1895, defendant in error went to Norman, in Cleveland county; that was the first time he had ever been in that county; that on the next day he filed the petition in this cause for divorce; that the same day, after filing said petition, or the next day, he left the county; that he returned there on the 31st of May, to attend the court in the hearing of a motion for alimony in the cause; that he stayed until the next day, and left upon the first train after the motion was heard; that he did not return to the county again until 1 o'clock of the morning of the day the cause was heard upon its merits: that, during the time said cause was pending he was absent from the territory, at various places, the most of the time at Indianapolis, regularly attending to business in which he * * * "The defendant in error, in was interested." his testimony in the cause, stated that his place of residence was Norman, Okl. T.; that he had been a resident of Oklahoma territory about six months, and of Cleveland county since about the 1st of April, 1895. The facts appearing from this record show that the defendant came to

this territory about the last of December, 1894, or first of January, 1895; that he stopped at Perry a part of the time, perhaps the greater part of the time until the 5th of April, occupying a furnished room there, and taking his meals at other places; that during a portion of that time he was absent from the territory, attending to business. He testifies that one object in his coming to the territory was to procure a divorce. The facts do not show him to have had He had no other business, and did not any other object. endeavor to establish any other business. He was by profession a lawyer and an author of legal text-books; yet he left his library in New York, and did not form or attempt to form any relationship with the practice of the law in this territory, or to acquire any property, or to make any investments, which might show any intent to permanently identify him with the territory. He had no relation or kindred living here. He brought with him only such personal effects as were necessary to one traveling from place to place, or making a short sojourn. We cannot be expected to believe that one whose income from the practice of the law and from authorship amounted to \$15,000 per annum would expect to better his condition financially or intellectually, and obtain greater remuneration in the practice of the law, or find more facilities and aids to legal authorship, in Perry or Norman than in the city of New York."

As to the causes for the estrangement of the parties I

quote the following from the opinion:—

"For 11 years the parties had lived together as husband and wife, with more apparent concord and happiness than is usally the lot of married people. No clouds had appeared to darken the horizon of their married life until. in Agust, 1893 the wife, whether rightfully or wrongfully, became impressed with the conviction that her husband had become infatuated with another woman. Within a little

more than a month from that time, the husband, without cause, without attempting to assign any cause, but, on the contrary, in the strongest terms stating that there was no cause save his own faults, abandoned the wife and family without making suitable provision for them. The wife, knowing of no other cause for such conduct upon the part of her husband, might well be excused attributing his actions to his infatuation for the woman under whose influences he had so recently apparently fallen."

The following extracts from a letter of the husband to wife, after he had left her and comments thereon by the court, throw further light on whether the wife was the party

in fault:

"I have nerved myself this evening to write you a con-I am unworthy of your love. never realized it until the past few weeks. letters have only served to emphasize my heartlessness and * * * I do not love you any longer as a huswrongdoing. band should love his wife. I am very guilty, and * * * I feel very tender have done you a grievous wrong. of you, and very sorry, sorry for you; but there is in my heart no response to the tender, loving things you have lately said and written to me. * * * My heart has wandered away from you." And why asks the court. she had been accusing him of crimes he had not committed? Because she had charged him with infidelity to his marriage vow, thus doing him a wrong,—the greatest of wrongs to a sensitive nature? No; these are not charged here as an excuse. The only suggestion of fault upon her part is that she "cared nothing for his intellectual life." Had the charge he now asserts been true, would he have closed that letter, "God keep you always in the peace and happiness you so well deserve?"

Before the suit was commenced the husband submitted a

proposed agreement for the consideration of his wife, which is

here given with the views of the court thereon.

In consideration of your retaining a lawyer, to be named by me, to obtain a divorce for you from me, and of your swearing to a complaint in the action (all the allegations of which shall be true), and of your intrusting the control of the action to me, and of your maintaining absolute secrecy until the decree is rendered, and then stating only that a divorce had been had (which may include showing a certified copy of the decree to any one you please), and of your good faith in thus facilitating a legal divorce, I will upon my part procure the divorce for you in a legal manner, and at my own costs and expense, without any publicity, and will, upon the retainer and verification of the complaint as aforesaid, and the surrender and cancellation of the agreement, execute and deliver to you a deed of separation in due legal form, binding myself to you and to a trustee, to be named by you, as follows. Then follow numerous provisions relating to financial settlements between the parties.

Some courts have mildly criticised Lord Stowell's expression in Evans vs. Evans that "the court has no scale of sensibilities by which it can gauge the quantum of injury done and felt" by mental pain and distress; but certainly no court will ever criticise us for saying that we have no scale by which we can properly gauge the sensibilities of one who could write such a document as the foregoing. It must be borne in mind that the defendant in error is one reputed learned in the law, who has acquired a reputation as a legal text writer, who has contributed to the legal literature of the country many works. He might well be assumed to know the law and its ethics. He might well be assumed to know that that document contained a proposition which could only be construed as an intended traud upon the courts

and the law, and the prostitution of his position as an official Stripped to its disgusting nakedness, when of the court. we consider that in New York the only ground for absolute divorce is adultery, it amounted to the plain proposition that he would draft against himself a complaint in divorce charging himself with adultery. It states expressly that the allegations of such complaint shall be true; retains for himself the control of the action against himself; promises to procure the divorce for her against himself at his own costs and expense, and without publicity; and, for this privilege, he is willing to pay large considerations in money. In any light we may view this document, it shows the writer to be possessed of moral sensibilities that we cannot think are of the delicate and sensitive nature his complaint im-Either he was the libertine which his wife suspected him to be, or he was willing to falsely accuse himself of being such. The excuse, or rather the explanation, which defendant in error gives of this remarkable document, is that it was not contemplated that the divorce therein considered was to be obtained in the state of New York, and consequently it did not follow that the complaint was to charge the crime of adultery. It seems to us that this explanation does not explain, but deepens, the complications with which defendant in error had surrounded himself: for the record shows that for many years the plaintiff in error has been, and still is, a bona fide resident of the state of To bring the action for divorce which defendant in error was endeavoring to undertake in any other state than New York would require that the wife should swear in her complaint that she was a resident of such state: so that the conclusion is that if it was not contemplated that the proceedings should be brought in the state of New York, and charge defendant in error with adultery, it was contemplated that the action should be brought in some other state, upon some other sufficient cause, but that the wife should commit the crime of perjury in swearing that she was a resident of such state."

The decision concludes:

"An unenviable fame has already attached to this territory by reason of the inducements which her laws have in the past offered for obtaining a dissolution of the status of The liberality of the law has been taken advantage of, and has been abused. A large portion of the divorces asked for in our courts were brought by citizens of other states, who came into this territory for the mere purpose of obtaining a divorce, and imposed upon the courts by perjury and fraud, not only as to the facts of residence, but also with respect to the procedure; thus occasioning injury to morals, reproach to the law, as well as obloquy to the judicature which must administer the laws. This court, as a conservator of society, of the family, upon which society is founded, of the morals of the people, of the good name and fame of the territory, owe it to all these that the laws shall not be administered with such laxity and disregard to the intention of the lawmakers as to bring reproach and dishonor upon the people of the territory, and upon their judiciary.

For the reasons stated herein, the judgment of the court below is reversed, and this cause dismissed."

The statement has been made by newspapers that this decision would render void some 12,000 Oklahoma divorces.

Another case decided during the past year is one of interest to the profession. In De La Montanya vs. De La Montanya (44 Pac.) the Supreme Court of California, by a divided court of four to three, decides that upon a divorce based on substituted service where the defendant and minor children though domiciled in the state are living out of the state, and the defendant makes no appearance, that the court

has no jurisdiction to allow alimony nor has it power to award to the plaintiff the custody of the children. The facts were that the defendant husband had been born, married and always domiciled in California; that he took the two small children, the issue of the marriage, by force and fraud, and a few days before the commencement of the suit for divorce, and in order to avoid the consequence thereof, clandestinely left the state and fled to Paris, France, where he made application to the ministry of justice of France for express permission to be domiciled in France. Decree of divorce was rendered in California subsequent to the application of the husband for a domicile in France but before the application had been acted upon or granted. The decree provided for the dissolution of the marriage, that the custody and control of the children be awarded to the plaintiff and that plaintiff have the right to apply in the future for alimony and counsel fees. A motion was made on behalf of the defendant to vacate the judgment in so far as it attempted to provide for the custody of the children and the allowance in the future of alimony. The motion was allowed in the Supreme Court.

In view of the rule previously established, under the California statutes, by Howell vs. Howell (37 Pac.) that after a final decree of divorce in which alimony was not granted the court has no jurisdiction to grant alimony as the court is only authorized to grant alimony "while an action for divorce is pending" and afterwards to "modify" its order, all a person has to do in California to avoid the responsibilities of marriage is to temporarily leave the state until decree is granted the deserted spouse; no alimony can be awarded for want of personal jurisdiction of the defendant; he may return to the state and the courts are powerless to award alimony.

The majority of the court in the Montanya case under-

stood the Pennoyer-Neff case (95 U.S.) to virtually hold that where the defendant is absent from the state, no matter whether his legal domicile be in the state or not, that substituted service can not be made the basis of a valid judgment in personam. The minority opinion in the Montanya case contends that the Pennoyer-Neff decision should be given no broader effect than the particular facts of the case warrant, and that in reality the case simply holds that when the defendant has an actual bona fide domicile out of the state that the rule against published service applies: that it was the well established rule of the state courts prior to the Pennover-Neff decision that substituted service against a domiciled but absent defendant would be permitted so far at least as the validity of a judgment might be brought in question in the jurisdiction where rendered (although perhaps not binding upon the courts of other states under the "full faith and credit clause" of the Federal Constitution), and Machine Co. vs. Radcliff (137 U.S.) is cited as making this distinction between the validity of such a judgment in the state where rendered and elsewhere.

Without entering upon a discussion of the question last suggested it may be said that a doubt naturally suggests itself whether a judgment good only in the state where rendered and not accompanied by such modes of procedure as would entitle it to respect in every other state should ever be authorized by any state, even though designed for local

purposes only.

Whether the Pennoyer-Neff case is authority or not for the rule as understood by a majority of the California court, there can be little doubt that such is and should be the law, and that it would be introducing a fruitful source for increased and vexatious conflicts of law to made the validity of a judgment in personam by published service upon an absent and non-appearing defendant depend upon that

hazey and uncertain question of the defendant's legal dom-In divorce cases where the domicile of the plaintiff must be determined, it would simply be intolerable to introduce the question of whether a non-resident defendant was not legally domiciled in the state where suit is filed. It is suggested by one eminent authority in commenting upon the success of the defendant Montanya in baffling the Court, that an exception to the general rule should be permitted in divorce cases, as to construct service against an absent defendant. I do not think this would be wise. injustice such as perpetrated in California could be remedied by the statute permitting an independent suit for alimony upon the defendant's return, notwithstanding the desirability in general of a prevention of a multiplicity of suits by requiring causes of action between the same parties to be settled as far as practicable in one proceeding.

If nothing better could be done to meet out justice in circumstances similar to the Montanya complications, we might let the Texas justice of the peace deal with the defendant. The justice began trying a divorce case when a lawyer informed him that he had no jurisdiction. "Well, I guess I can bind the man over," was the reply, which it is

said he promptly proceeded to do.

A suit for divorce is a suit quasi in rein, It is rein so far as the marriage status is concerned. It is sometimes said that there are two res, two distinct things, the status of the wife and the status of the husband. In theory this is true. In practice it seldom is, and never should be considered. This doctrine that the marriage union is more than a single thing to be acted upon has led the courts into much absurdity and conflict or laws. New York in People vs. Baker (76 N. Y. 78) and later cases, and Wisnconsin in Cook vs. Cook (56 Wisc. 195) decline to recognize a divorce upon substituted service in the state where the

plaintiff is domiciled, upon the theory above mentioned. the New York case, Baker was prosecuted for bigamy. was married to his former wife in Ohio and she continued to live there. He obtained a domicile in New York, and while there his wife obtained a decree of divorce from him in Ohio without personal service. He subsequently married again in New York, and was there prosecuted for bigainy. The Court of Appeals held that while Ohio had the right to determine the status of its own domiciled citizens and could say that the marriage as to the wife was dissolved, yet New York had the same rights as Ohio and could determine the status of its citizens and held that the husband, although he had no wife, was yet a married man and guilty of polygamy in attempting to contract the second marriage. The Wisconsin case is to the same effect and is decided upon the same theory.

Of course each state has the right to determine the status of its own citizens. An actual bona fide domicile of the plaintiff in the state of the suit should authorize a divorce upon substituted service. If the absence of the defendant could prevent a divorce, one could defeat a divorce for all time by moving to South Carolina or Spain. If then such a suit be maintained in the state of the plaintiff's domicile against a non-resident defendant (and such is the almost universal rule in the United States), a divorce so granted, if accompanied by the proceedure entitling it to recognition by comity, international law, or under the "full faith and credit" clause of the Constitution, should be recognized as fixing the status of both parties. It should be either recognized as dissolving the marital union for all purposes as to the husband and wife alike, or it should not be given credit at all, not even to dissolving the union as to the plaintiff. If the decree of a foreign state is worthy of being recognized as dissolving the marriage as to plaintiff in the foreign state,

there is no reason in inflicting a hardship upon the other party by holding him to still be married. I think Mr. Bishop is justified in ridiculing, as he does, the absurdity of the rulings that a man is a married man without having a wife. He thinks there is no reasons and few decisions sustaining such a doctrine and presents the contrary view of one of the editors of Story on Conflict of Laws as another instance for which he (Mr. Bishop) makes such bitter and frequent complaint of, all through his most excellent work, the carelessness of judges and writers in considering divorce law, of overlooking things and omitting to think. He attributes much of the conflict of laws in these cases, to a refusal to look and think. Upon this subject he says:—"It is not possible to name any question in our law exceeding the present one in importance. Since we are a country composed of states, if judges will administer the law in a way to create a system of polygamy in all the states, and lay in every state a trap door to the penitentiary for people to fall into, who are morally innocent, it is submitted that there should be a better foundation for such woe-breeding and demoralizing decisions than a refusal, assumed to be under the rule of stare decisis to look when a blunder is pointed out."

Without calling attention to any instances in particular, there is considerable diversity both in decisions and statutes, as the right to award alimony in a separate action

where a divorce has been granted in another state.

The very statutes of some states seem to contemplate that there are divorces of other states that they cannot recognize except as ground for an independent action for divorce in their own states, Michigan for instance has such a provision. Several of the states require that the delictum must have been committed in the state, or that both parties reside in the state, or if the cause occurred out of the state that it was one of the grounds for divorce in the state, and

that a divorce granted out of the state should be of no force or effect in the state. Some provide that divorce shall not be granted on published service and others that a divorce

shall be operative as to both parties.

If there is reason for holding that a marriage valid where contracted is valid everywhere, there is likewise reason that a lawful divorce decreed in one state should be upheld in every other state. The purity and morality of society and the protection of the innocent demand that both of these rules should prevail.

STATISTICS.

From Statistics published some years ago by the Central Law Journal upon the authority of a paper by the United States Commissioner of Labor, I quote the following figures: Divorces granted in the United States during the 20 years from 1866 to 1886, 328,716 which was an increase of divorces during this period of 157 per cent. as compared with an increase of population during the same period of only 60 per cent. In 216,176 cases, or nearly two thirds, the decree was granted upon the petition of the wife. In 57,524 cases there were no children of the marriage and 141,810 cases the custody or support of children were not involved. In the remaining 130,000 cases the welfare of children was effected by the decree.

CONCLUSION.

It would be a limitless task to point out all sources of conflict of laws in the decisions and statutes of the various states. The few facts and illustrations here given must serve to suggest to you countless conflicts and complications in this branch of the law which have come under your observation during the long and varied experience at the bar many present have had. If this paper serves in any degree to impress this association with the necessity of the adopttion of a union code by our states upon this and other important branches of the law, I shall feel well paid for the time spent in its hasty preparation. I am not among those who ridicule the idea of the practicability of a unification of the law of the states, particularly upon those important branches of substantive law out of which so much confusion and conflict exists. I believe that this will be accomplished in part in the not extremely remote future, and that ultimately a unification of the law of procedure will be effected. The success of the German States, after years of effort, in adopting last year a union code is at least encouraging to The fact that some nineteen of our states more than two years ago had appointed code commissioners for this work is still more gratifying. The members of our association should invite the present Legislature to appoint one or more commissioners for this work, and to make an appropriation for their compensation if the finances of the young state will permit.

CONSTITUTION AND BY-LAWS

OF THE

STATE BAR ASSOCIATION OF UTAH.

CONSTITUTION.

ARTICLE I. The name of the Association shall be The State Bar Association of Utah.

- Ast. 2. The object of the Association shall be the elevation of the standard of professional learning and integrity; to inspire the greatest degree of respect for the efforts and influence of the Bar in the administration of justice; and to cultivate fraternal relations among its members.
- ART. 3. The officers of the Association shall be a President, a Vice-President from each Judicial District, Secretary, Treasurer, an Executive Council of five members, and a Committee on Grievances consisting of three members, which officers shall be elected annually and hold until successors are elected and accept.
- ART. 4. The President shall deliver an address at each regular annual meeting of the Association, and the duties of the President, Vice-President, Secretary and Treasurer shall be such as usually pertain to those officers respectively.
- ART. 5. Regular meetings of the Association shall be annually held at Salt Lake City on the second Monday in January, at 7:30 p. m., at the Supreme Court room, for the election of officers, and for addresses and discussions; also for the transation of any other business of the Association The President and the members of the Executive Council and Committee on Grievances shall be elected at the annual meeting by ballot.

Special meetings may be called at any time by the Executive Council or the President, and must be called when a request signed by fifteen members of the Association is made therefor. And the notice of such special meeting shall be by publication in the daily papers of Salt Lake, Ogden and Provo, or by personal notice sent by the Secretary to each member of

the Association; in either case not less than three day's notice of the time and place of holding such meeting shall be given.

- ART. 6. A quorum for the transaction of business shall be twenty members.
- ART. 7. No person shall be admitted to membership in this Association who is not a member of the Bar of the Supreme Court of Utah.

ART. 8. All applications for membership at the annual meeting shall be referred to the Executive Council, who shall report on the same to the Association, with their recommendation, and no person shall be admitted to membership except by a two-thirds vote of the members present. During the interval between annual meetings, applications for membership may be determined by the Executive Council. Each member shall pay an admission fee of five dollars, and annual dues, after the first year, of three dollars. Any member may be expelled on a vote of a majority of the members of the Association.

- ART. 9. The Executive Council shall manage the affairs of the Association, subject to the Constitution and By-Laws; it shall, also, on or before the first day of May of each year, designate such number of members, not exceeding six, to prepare and deliver or read, at the next annual meeting thereafter, appropriate addresses or papers upon subjects chosen and assigned by the Council, to each of such members as may be so selected for such purpose.
- ABT. 10. All addresses delivered and papers read before the Association, a copy of which is furnished by the author, shall be lodged with the Secretary. The annual address of the President, the reports of committees and all proceedings of the annual meeting shall be printed; but no other address delivered or paper read shall be printed except by order of the Executive Council.
- AET. 11. The Committee on Grievances shall be charged with the investigation of all complaints against members of the Association, members of the Bar and officers of the Courts, and also of all complaints which may be made to them in matters affecting the members of the legal profession, the practice of law and the administration of justice, and shall report thereon to the Association, with such recommendation as they may deem proper. The proceedings of such committee shall be secret.
- ART. 12. If a vacancy occurs in the office of President, the Executive Council shall designate a Vice-President to fill his place. Said Council shall also fill any vacancy that may occur in the office of Secretary or Treasurer; and said Council and said Committee on Grievances may respectively fill any vacancy that may occur therein.

- ART. 13. The Treasurer shall render an account annually to the Executive Council, and said Council shall report the same to the Association at its annual meeting.
- ART. 14. The Executive Council shall cause to be printed such number of the Constitution and By-Laws of the Association, with the roll of the members of the Association, as it shall deem best, not exceeding one thousand copies, and shall distribute the same to members of the Association, and to such other persons, or associations, or societies, as it may deem prudent; and shall, with the proceedings of each annual meeting, print a roll of the members of the Association.
- ART. 15. This Constitution shall remain unalterable except by a vote of two-thirds of all members.

BY-LAWS.

SECTION 1. The order of exercise at each annual meeting shall be as follows:

- 1. Opening address by the President.
- 2. Consideration of applications for membership.
- 3. Report of Executive Council.
- 4. Report of Committee on Grievances.
- 5. Reports of special committees.
- 6. Delivering or reading of addresses and papers.
- 7. Miscellaneous business.
- 8. Election of officers and delegates to American Bar Association.
- SEC. 2. There shall be chosen by ballot, at each annual meeting, three members as delegates to the American Bar Association for the ensuing year.
- SEC. 3. These By-Laws may be amended at any regular meeting by a majority vote of the members present.

OBITUARY.



Malter Murphy.

Born April 26th, 1861.

Died February 5th, 1897.

Walter Murphy was a high-minded, honorable man in all relations of life. Endowed with high mental attainments, all his life he had been a close student of books, of men and affairs, which in the practice of his profession bore fruit in ripened culture and wide learning. Courteous and kind in his intercourse with others, he was particularly genial and happy in his association with the members of the bar. His powers were ever exerted to instruct or amuse, never to wound.

May not we, who knew him well, say of him:

"Whose fancy, as bright as the firefly's light,
Played 'round every object, and shone while it played;
Whose wit, in the combat, as gentle as bright,
Ne'er carried a heart-stain away on its blade."

Therefore, in sad remembrance be it

Resolved. That the members of the bar of the Supreme Court of Utah are profoundly grieved over the death of Walter Murphy, their kind friend and associate.

Resolved. That we lament the loss of the brilliant advocate and learged lawyer, and cherish the memory of the

man and citizen.

Resolved, That the Attorney-General be requested to present these resolutions and preamble to the Supreme Court of the State and to the Circuit Court of the United States for this District, and,

Resolved. That the Chairman of this meeting present a copy of the minutes of these proceedings to the family of the deceased, with an expression of the heart-felt sympathy of the bar.

C. S. VARIAN, CLESSON S. KINNEY, E. B. CRITCHLOW.

CHARTER MEMBERS.

Allen, C. ESalt Lake City.
Allison, E. MOgden.
Anderson, John B Salt Lake City.
Anderson, T. J Salt Lake City.
Armstrong, Geo. G. Salt Lake City.
Baldwin, Charles Salt Lake City.
Bennett, C. W Salt Lake City.
Booth, H. E Salt Lake City.
Boreman, Jacob SOgden.
Bradley, Wm. MSalt Lake City.
Browne, T. EllisSalt Lake City.
Buys, William Heber.
Cannon, John M Salt Lake City.
Cherry, A. N Salt Lake City.
Daly, P.JSalt Lake City.
Dininny, H. J Salt Lake City.
Eichnor, Dennis C. Salt Lake City.
Ferguson, BarlowSalt Lake City.
Gray, J. GSalt Lake City.
Henderson, H. HOgden.
Jack, C. BSalt Lake City.
Jones, Elmer BSalt Lake City.
Judd, J. WSalt Lake City.
Kahn, William Salt Lake City.
Kinney, Clesson S. Salt Lake City.
Lee, E. OSalt Lake City.
Loofbourow, C. F Salt Lake City.
MacMillan, J. H Ogden.
Marshall, John A Salt Lake City.
Marshall, Thomas Salt Lake City.
*Mills, William Gill Salt Lake City.
*Deceased

Moyer, George W. . . Salt Lake City. Moyle, James H....Salt Lake City. Moyle, O. W...... Salt Lake City. *Murphy Walter,....Salt Lake City. Nye, George L..... Salt Lake City. Pearson, Charles E. Salt Lake City. Pence, Charles J.... Salt Lake City. Richards, Charles C.Ogden. Richards, F. S. Salt Lake City. Richards, Joseph T. Salt Lake City. Ritchie, M. L..... Salt Lake City. Royle, J. C..... Salt Lake City. Schroeder, A. T.... Salt Lake City. Sheckell, N. J......Salt Lake City. Shepard, Richard B. Salt Lake City. Smith, Grant H.... Salt Lake City. Snyder, W. I..... Park City. Stephens, Frank B. Salt Lake City. Street, J. A..... Salt Lake City. Sutherland, George Salt Lake City. Sutherland, J. G. . . . Salt Lake City. Tanner, Nathan, Jr.. Ogden. Taylor, A. V........Salt Lake City. Taylor, John Lu....Salt Lake City. Thompson, E. D. R. Salt Lake City. Van Cott, Waldermar. Salt Lake Cy. Varian, C. S...... Salt Lake City. Walters, J. C..... Logan. Warner, M. M.....Provo. Williams, James A. Salt Lake City. Williams, P. L.....Salt Lake City.

^{*}Deceased.

MEMBERS ADMITTED JUNE 4th, 1894.

Evans, DavidOgden.	King, W. HSalt Lake City.
Henderson, H. P Salt Lake City.	Maginnis, W. LOgden.

Members Admitted at the Second Annual Meeting, January, 1895.

Brown, Wiley Salt Lake City.	Letcher, J. R Salt Lake City.
Cherrington, Pennel Salt Lake City.	Lewis, Eugene Salt Lake City.
Critchlow, E. B Salt Lake City.	McDowell, S. A Sait Lake City.
Costigan, Geo.P., Jr. Salt Lake City.	Miner, J. ASalt Lake City.
Darke, S. WSalt Lake City.	Norrell, A. G Salt Lake City.
Denny, Pressly Beaver.	Pierce, FrankSalt Lake City.
Dickson, W. H Salt Lake City.	Rogers, L. ROgden.
Ellis, A. C., Jr Salt Lake City.	Rognon, E. G Salt Lake City.
Harkness, H. K Salt Lake City.	Whittemore, C. O Salt Lake City.
Howat, A Salt Lake City.	Young, Le Grand Salt Lake City.
Hurd, J. H Salt Lake City.	Zane, C. S Salt Lake City.
Hutchison, W. R Salt Lake City.	Zane, J. M Salt Lake City.
Kaighn, M. M Salt Lake City.	

Members Admitted at the Third Annual Meeting, January, 1896.

Jones, B. H	.Brigham City.	Edwards	, H.	C8	lalt Lake	City.
Baskin, R. N	.Salt Lake City.					

Honorary Members Admitted January, 1896.

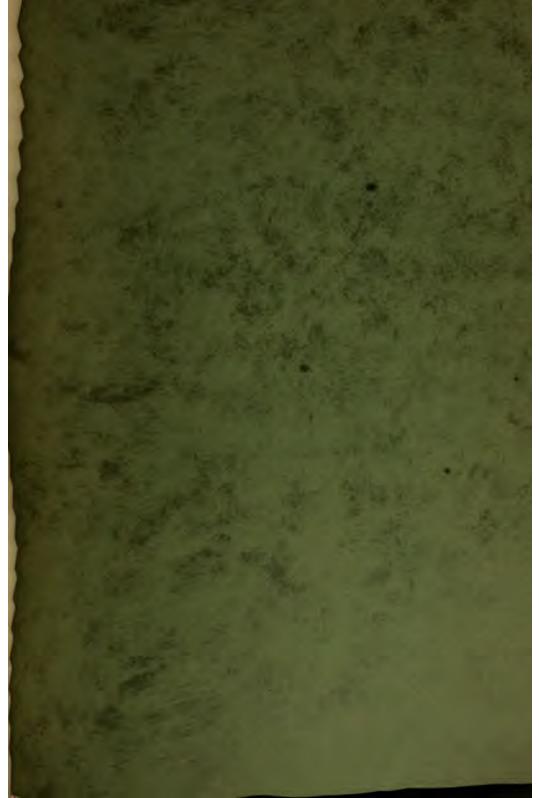
Chief Justice C. S. Zane	Salt Lake City.
Justice G. W. Bartch	Salt Lake City.
Justice J. A. Miner.	. Salt Lake City.
Judge John A. Marshall	Salt Lake City.
Judge Charles H. Hart	.Logan.
Judge Henry H. Rolapp	Ogden.
Judge Ogden Hiles	Salt Lake City.
Judge E. V. Higgins	Cedar City.
Judge William McCarty	Munroe.
Judge Jacob Johnson	Spring City.

Members Admitted at the Fourth Annual Meeting, January, 1897.

Bishop, F. M Salt Lake City. Dix. P. A Salt Lake City.	Jones Ricy H Salt Lake City. Kenner, S. A Salt Lake City.
Ford, W. FSalt Lake City.	Sonnedecker, W. N. Salt Lake City.
Hills, W. J Salt Lake City.	Witcher, A. B Salt Lake City.

Honorary Members Admitted January, 1897.

Judge A. N. Cherry	Salt Lake City.
Judge W. N. Dusenberry	Provo.
Judge A. G. Norrell	Salt Lake City.





REPORT

OWNERS

FIFTH ANNUAL MEETING

OF THE

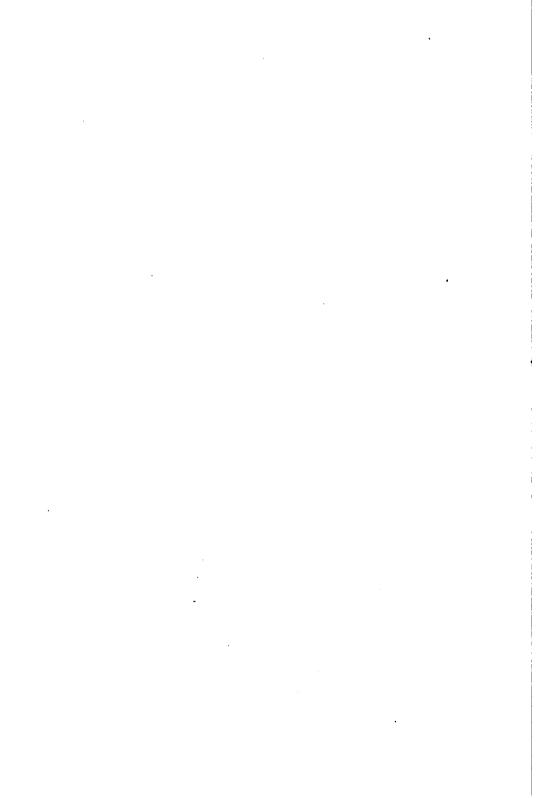
STATE BAR ASSOCIATION

OF UTAH.

HELD AT

BALT LAKE DITY, SANUARY 10.

1898.



REPORT

OF THE

FIFTH ANNUAL MEETING

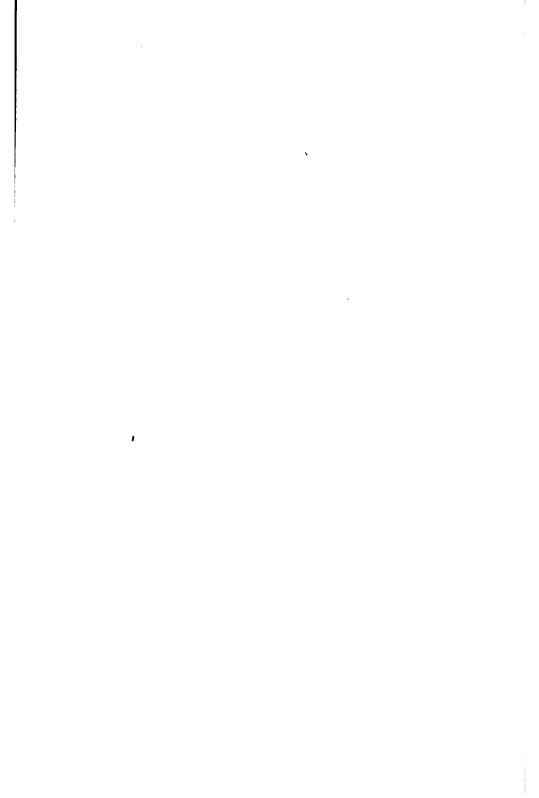
OF THE

STATE BAR ASSOCIATION,

OF UTAH.

HELD AT SALT LAKE CITY, JANUARY 10, 1898.

PRINTED BY HARPER & DEARBORN,
THE COURT CALENDAR PUBLISHERS,
SALT LAKE CITY.



OFFICERS FOR THE YEAR 1894.

President	J. G. 8	SUT.	HERL	AND.
VICE-PRESIDENTFirst Judicial District	s.	R. '	THUR	MAN.
VICE-PRESIDENT Second Judicial District	M	М.	WAR	NER.
VICE-PRESIDENT Third Judicial District	C.	W.	BENI	NETT.
VICE-PRESIDENTFourth Judicial District.	JAME	s N.	KIME	BALL.
SECRETARYR	RICHAR	DВ.	SHEF	ARD.
TREASURER	ELI	MER	В. ЈО	ONES.

Executive Council.

P. L. WILLIAMS, JOHN A. MARSHALL, F. S. RICHARDS, E. M. ALLISON, GRANT H. SMITH.

Committee on Grievances.

THOMAS MARSHALL, C. S. VARIAN, J. H. MACMILLAN.

Delegates to the American Bar Association for 1894.

J. H. MACMILLAN, H. P. HENDERSON, P. L. WILLIAMS.

Alternates to the American Bar Association for 1894.

C. W. BENNETT, W. L. MAGINNIS, M. M. WARNER.

OFFICERS FOR THE YEAR 1895.

President	.J. G. SUTHERLAND.
VICE-PRESIDENTFirst Judicial District	S. R. THURMAN.
VICE-PRESIDENT Second Judicial District	PRESSLY DENNY.
VICE-PRESIDENT Third Judicial District	C. W. BENNETT.
VICE-PRESIDENTFourth Judicial District .	J. S. BOREMAN.
SECRETARYRI	CHARD B. SHEPARD.
TREASURER	ELMER B. JONES.

Executive Council.

P. L. WILLIAMS, Chairman.

GRANT H. SMITH, Secretary,
JOHN A. MARSHALL,
F. S. RICHARDS,
E. M. ALLISON.

Committee on Grievances.

THOMAS MARSHALL, C. S. VARIAN, J. H. MACMILLAN.

Delegates to the American Bar Association for 1895.

P. L. WILLIAMS, J. L. RAWLINS, A. G. NORRELL.

OFFICERS FOR THE YEAR 1896.

President	JACOB S.	BOREMAN.
VICE-PRESIDENT First Judicial District	CHARLE	S H. HART.
VICE-PRESIDENT Second Judicial District.	.HENRY I	I. ROLAPP.
VICE-PRESIDENT Third Judicial District	og1	DEN HILES.
VICE-PRESIDENTFourth Judicial District.	E.	A. WILSON.
VICE-PRESIDENTFifth Judicial District	E. V	7. HIGGINS.
VICE-PRESIDENT Sixth Judicial District	WILLIAM	McCARTY.
VICE-PRESIDENT Seventh Judicial District	JACOB	JOHNSON.
SECRETARY	CLESSON	S. KINNEY.
Treasurer		E. O. LEE.

Executive Council.

JAMES H. MOYLE, Chairman,
JOHN M. ZANE, Secretary,
ANDREW HOWAT,
P. L. WILLIAMS,
E. M. ALLISON.

Committee on Grievances.

J. A. WILLIAMS, A. T. SCHROEDER, C. S. VARIAN.

Delegates to the American Bar Association for 1896.

J. G. SUTHERLAND, F. S. RICHARDS, J. A. MARSHALL.

OFFICERS FOR THE YEAR 1897.

President	CF	iarles s.	VARIAN.
VICE-PRESIDENTFirst Ju	idicial District	CHARLES	H. HART.
VICE-PRESIDENT Second	Judicial DistrictF	HENRY H.	ROLAPP.
VICE-PRESIDENT Third Ju	dicial District	OGDE	N HILES.
VICE-PRESIDENT Fourth	Judicial District. W	. N. DUSEI	BERRY.
VICE-PRESIDENTFifth Ju	dicial District	E. V.	HIGGINS.
VICE-PRESIDENT Sixth Ju	idicial DistrictW	ILLIAM M	CCARTY.
VICE-PRESIDENT Seventh	Judicial District	JACOB J	OHNSON.
SECRETARY		LESSON S.	KINNEY.
TREASURER	······	B	c. o. Lee.

Executive Council.

JAMES H. MOYLE, Chairman,
JOHN M. ZANE, Secretary,
ANDREW HOWAT,
P. L. WILLIAMS,
E. M. ALLISON.

Committee on Grievances.

J. A. WILLIAMS, A. T. SCHROEDER, H. E BOOTH.

Delegates to the American Bar Association for 1897.

JOHN W. JUDD, P. L. WILLIAMS, JOHN M. ZANE.

OFFICERS FOR THE YEAR 1898.

President		CHARLES	S. VARIAN.
VICE-PRESIDENT	First Judicial Distric	tCHARLE	ES H. HART.
VICE-PRESIDENT	Second Judicial Distr	rictHENRY	H. ROLAPP.
VICE-PRESIDENT T	Chird Judicial Distri	ictOGI	DEN HILES.
VICE-PRESIDENTI	Fourth Judicial Distr	ict. W. N. DUS	ENBERRY.
VICE-PRESIDENT	Fifth Judicial Distric	tE. V	7. HIGGINS.
VICE-PRESIDENTS	Bixth Judicial Distric	tWILLIAM	McCARTY.
VICE-PRESIDENT 8	Seventh Judicial Dis	trictJACOE	JOHNSON.
SECRETARY		CLESSON	S. KINNEY.
Treasurer		G	EO. L. NYE,

Executive Council.

JAMES H. MOYLE, Chairman,
JOHN M. ZANE, Secretary,
ANDREW HOWAT,
P. L. WILLIAMS,

E. M. ALLISON.

Committee on Grievances.

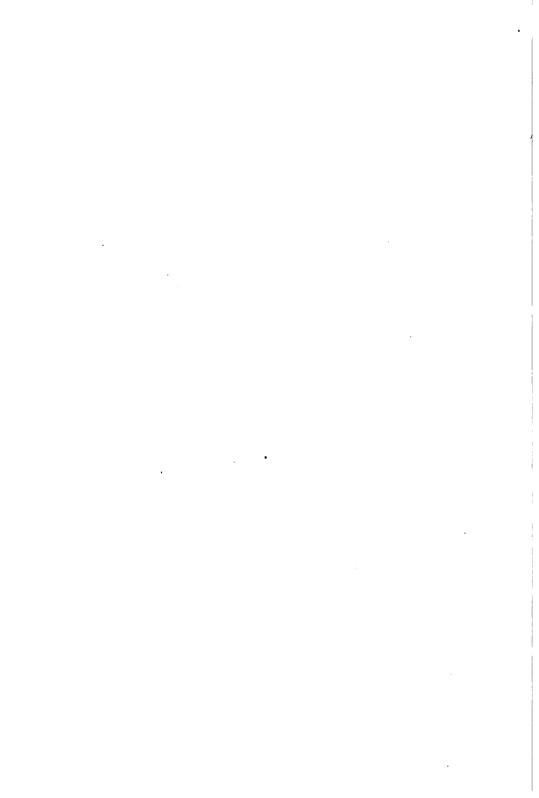
J. A. WILLIAMS,

W. I. SNYDER.

H. E. BOOTH.

Delegates to the American Bar Association for 1898.

(To be elected in June 1898.)



Minutes of the Fifth Annual Meeting of the State Bar Association of Utah, held in the Federal Court Room at Salt Lake City, Utah, January 10th., 1898.

Meeting was called to order by the President, C. S. Varian, who then delivered the annual address devolving upon him as President.

The Executive Council then reported favorably upon the names of the following applicants for membership: Alexander McMaster, Richard W. Young, John H. Murphy and Daniel Harrington.

Upon a vote being taken separately, on each name they were all duly elected as regular members of the Association.

An address was then given by Richard B. Shepard upon the subject, "Some recent changes in our laws."

Annual election of officers.

The following officers for the ensuing year were duly elected:

President, Charles S. Varian; Vice-Presidents: First Judicial District, Judge Charles H. Hart; Second Judicial District, Judge Henry H. Rolapp; Third Judicial District, Judge Ogden Hiles; Fourth Judicial District, Judge W. N. Dusenberry; Fifth Judicial District, Judge E. V. Higgins; Sixth Judicial District, Judge William McCarty; Seventh Judicial District, Judge Jacob Johnson; Secretary, Clesson S. Kinney; Treasurer, George L. Nye.

Executive Council: James H. Moyle, Chairman; John M. Zane, Secretary; Andrew Howat, P. L. Williams and E. M. Allison.

Committee on Grievances: James A. Williams, Wilson I. Snyder and H. E. Booth.

Mr. George L. Nye then made a motion, that the election of delegates to the American Bar Association be deferred until a later and called meeting of this Association some time during the summer. Motion carried.

Mr. E. D. R. Thompson then moved that the report of the Treasurer of the Association be printed with the report of the proceedings. Carried.

Mr. J. H. Moyle then moved that the new Treasurer and Secretary audit the accounts of the out going Treasurer. Carried.

A resolution was passed thanking the Marshal for furnishing the Court room.

A vote of thanks was then given to those giving papers and the meeting then adjourned sine die.

CLESSON S. KINNEY, SECRETARY.

TREASURER'S REPORT, 1897.

RESOURCES:

Cash on hand January 1st., 1897	-	
Total	\$1 =	17.15
Expenditures:		
Paid for printing Annual report, 1897	8	50.00
Stamps and Stationery		10.00
Balance on hand January 10th., 1898		57.15
Total	\$ 1	17.15
Funds in Treasury, as per balance, \$57.	1	 5.

REPORT OF AUDITING COMMITTEE.

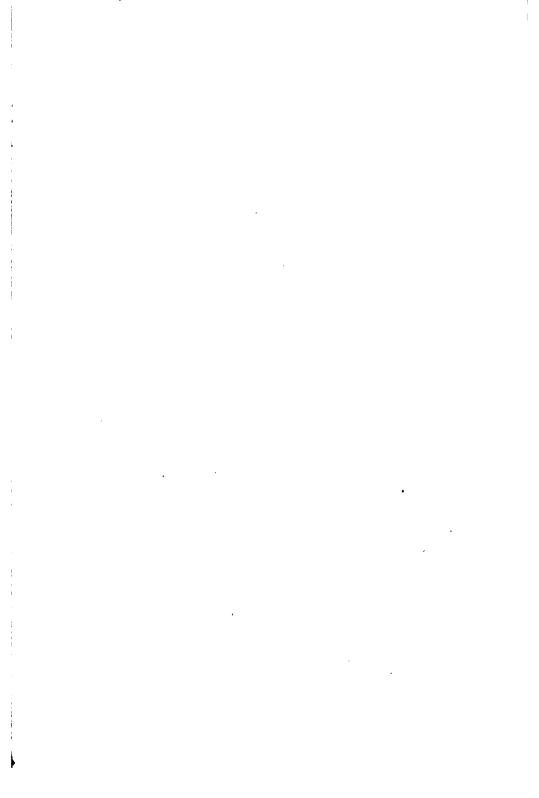
We find the above statement to be correct.

GEORGE L. NYE,

CLESSON S. KINNEY,

Auditing Committee.

E. O. LEE, TREASURER.



PRESIDENT'S ADDRESS.

By C. S. VARIAN, PRESIDENT.

GENTLEMEN OF THE BAR ASSOCIATION:-

The Constitution requires the President of the Association to deliver an address at the annual meeting. Neither the subject nor the length of this annual infliction is prescribed, and I presume your health and safety in such particulars, are largely in the keeping of the speaker. Nevertheless, a realizing sense of my obligations to my fellows admonishes me to abridge the scope and shorten the time of my remarks.

It is necessary, however, that I should direct attention generally to the state of the law, noting some changes and interpretations by the Legislature and the Courts, since our last meeting, as well as alterations proposed by Constitutional Amendment.

Since our last meeting, Walter Murphy, a member of this Association has passed away. Appropriate resolutions were adopted at a general meeting of the Bar, held February 8th., 1897, which were presented to the State and Federal Courts, and incorporated in the minutes of the proceedings of this Association.

Judge Sutherland, who filled the office of President of this Association during the first two years of its life, stricken by disease, has retired from active pursuits and removed from our midst.

A special meeting of the Association was held on February 8th., 1897, to consider the advisability of suggesting certain Amendments to the Constitution of the State, and to provide for an examination of the Code reported by the Code Commission.

The subjects considered were: The jurisdiction of the Supreme Court on Appeal; legislative procedure with reference to the first and second reading of bills, and the evidential effect to be given enrolled bills, duly authenticated and deposited with the Secretary of State. Pursuant to authority conferred, the President subsequently appointed Franklin S. Richards and William H. Dickson a committee to propose amendments to the proper legislative Committees. Their report is on file with the Secretary. Amendments were proposed in the Legislature and by authority thereof are to be voted on by the people at the next general election.

A committee consisting of Thomas Marshall, John M. Zane, Parley L. Williams, and James A. Williams was also appointed to examine the Code as proposed by the Code Commission. It is believed some labor was indulged in by the Committee, but no report of its doings was ever made. The delegates to the American Bar Association were unable to attend its session in August last. The President made some effort to fill these places without success, and Utah was unrepresented.

The Revised Statutes of Utah, popularly known and designated as the "Code," took effect on January first. The laws are contained in one book of superior paper, type and binding, and with those enacted by the last Legislature, embrace the entire body of our statute laws. It is believed that the Code Commission has done its work well, which the worth and convenience of the book attest. The changes and additions made to the law in the Revision will in part be treated by Mr. Shepard, and I pass from further consideration of the subject.

The laws enacted by the Legislature of 1897, are not included in the Revision prepared by the Code Commission, and attention may be given to some enactments.

One, designed specially for the protection of newspapers from the assaults of those who have been libelled, deserves attention. Generally, it provides for a measure of damages in a case where the publication was in good faith, but due to mistake or misapprehension of the facts, and a full and fair retraction is published as specified. A discrimination is made in favor of candidates for public office who shall be libelled, in that the retraction must be made editorially. In all cases within the statute the legislative standard of damages is defined to be actual.

It is not quite clear that this statute will have the desired effect. Passing the question of a special law regulating the practice of Courts of Justice, it is not perceived that the law of libel in cases of newspapers has been improved. Without the statute, the law seems to be applicable to newspaper men and others alike, that only compensatory or actual damages can be awarded under the circumstances detailed in the statute. Just why any distinction should be made between the penalties imposed for libels by the press, and those perpetrated by individuals, is not clear to the ordinary mind.

The great newspapers of the country are very generally owned by corporations, whose sole object of existence is to make money. There is absolutely no restraint upon their publications, but by pecuniary penalties, which if enforced tend to reduce the profits. They have no more right to protection in their mad march over the lives and reputations of men than has the private citizen.

After all, the true intent of this law—if it be one—is, that where neither malice nor oppression appears the measure of damages shall be compensation. The difficulty is, that a particular class of persons who libel through the press is distinguished, and as to them a rule of evidence not applicable to other persons or cases, is arbitrarily prescribed. It is worthy of consideration, whether this act is not subject to constitutional objection.

By an Act taking effect May 11, 1897, the statute of limitations was amended enlarging the time. By an express provision of the Revised Statutes the changes in the statute do not apply to actions already commenced, nor to cases where the time has fully run. Revised Statutes Sec. 2900. Thus a grave question, involved in the uncertainty of conflicting authority, is satisfactorily disposed of.

One of the most important laws enacted in 1897, was that relative to mining claims, entitled "An Act Providing for the manner of locating and recording quartz and placer Mining Claims". As yet but one feature of this law has been before the Courts. In "State vs. Monk", the provisions of Section 8 of the Act requiring the mining recorders to deposit their books and records with the County Recorder within a specified time, were held to be constitutional. Indeed it is not supposed that any provision of the act is in conflict with the Constitution, but a question of conflict with the Federal Statutes may arise under Section 5. This Section appears in the Revised Statutes as Section 1499, and is as follows:

"Within ninety days from the date of posting the location notice upon the claim, the locator or locators, or his or their assigns, shall do at least fifty dollars worth of work upon said claim. Every person or company owning a group of claims and doing the development work at one point, shall post a notice upon such claim (at the discovery monument) stating where such work is being done."

There is nothing in the language of this section indicating the intention that this work is for the purpose of and is to be confined to, developing the discovery. Ordinary development work anywhere on the claim, will comply with the statute, and the question is, does the requirement of this section as to the time of doing a portion of the work conflict with the United States Statute? In all of the mining states and territories legislation has been enacted, to the end that,

a would be locator of a mining claim, shall be required to demonstrate to a reasonable certainty that the deposit located is in a vein of lode within the limits of the claim and to show that he claims in good faith. In all but California, Oregon and Washington, I believe, the locator is required to sink a shaft or run an equivalent tunnel of a prescribed number of feet. He need not do this at the asserted or called point of discovery. He may do his work at any point on the surface claim, but nevertheless it is discovery work and for the purpose of disclosing the vein. As said by Mr. Morrisson the "discovery shaft is a part of the process of location subsequent to discovery."

In these states, the time for completing the discovery work is also the time for marking the boundaries and filing the location notice, by which the discovery is perfected. In other words, each act required by the state statute to be done by the locator, is preliminary to the making of a valid location. In California, the locator is required to do "fifty dollars worth of labor in developing his discovery." The labor is to be "deemed a necessary act in completing the location and a part thereof."

The validity of this legislation has not been passed upon by the United States Supreme Court, but has been universally upheld in the State Courts. There would seem to be no objection to the state or local law regulating the manner of making a location.

The difficulty with our statute lies in the fact, that it does not appear that the work provided for is designed as "a part of the process of location." No indication is given, that the work is required as discovery work. On the contrary, the context of the act, in the two preceding sections, seems to make it clear that this work is not designed as discovery work. It is there provided that the locator must mark his boundaries and file for record his notice of location within thirty days from the date of discovery and posting

notice. Thus, the boundaries are marked and the record made sixty days before the locator is required to complete the development work. What effect, then, is to be given to the doing of this work? Evidently it is not—necessarily at least—in aid of a discovery of a vein. It may be done after the location is perfected, and anywhere upon the claim. It is conceded that the State may enlarge the amount of annual labor required, but it may not restrict the time in which this labor is done. If this ninety-day work is considered as ordinary development work, the requirement as to time is in conflict with the Federal Statute.

The interpretation of Section 6 is also somewhat in doubt. Whether the proof of work may be shown by the affidavit of the person who controlled and caused the labor to be performed, or whether each person who labors must make affidavit, is uncertain.

I have said enough to illustrate the confusion and obscurity of the statute, suggesting the necessity of amendment. For the purpose of location the work should be expressly restricted to the discovery of the vein, and the location should not be complete nor the record made until the work is done and its object accomplished. I believe, also, that the state law should embrace the whole subject matter leaving nothing to the determination of local rules and regulations. A general law, uniform in its operation throughout the State would best conserve the interests of the mining public.

In this connection, I note a proviso of the general statute of limitations relative to waste and trespass, prepared by the Code Commission and adopted by the Legislature in Section 2877, as follows: "That when the waste or trespass is committed by means of underground work upon any mining claim the cause of action shall not be deemed to have accrued until the discovery by the aggrieved party of the facts constituting such waste or trespass." This provision is eminently just and satisfactory.

Prior to the admission of the Territory into the Union. the business of mining, under conditions existing here, had been supposed to be affected with a public interest and legislation was enacted authorizing the exercise of the right of eminent domain in such behalf. The Legislature of the State in 1896 re-affirmed this doctrine, and its principles have been adopted and carried into the Revised Statutes by the succeeding legislature. In October, 1896, the Supreme Court in discussing and passing upon the validity of "An Act regulating the hours of employment in underground mines and in smelting and ore reduction works" known as the "Eight Hour Law", took occasion to deny that the business of mining is affected with a public use, and challenged the application of the right of eminent domain to such purpose. The question was not necessarily involved, and after a lapse of time two of the Judges, constituting a majority of the Court, added a special concurrence withholding assent to so much of the opinion as referred to this question, on the ground that its importance demanded a full argument and careful investigation. The question is thus an open one so far as the two Associate Justices are concerned, but the Chief Justice is emphatically of the opinion that the right of eminent domain may not be exercised in the business of mining. The question is of grave importance. In Nevada, under substantially similar conditions this right of eminent domain has been sustained, upon the ground that mining was the greatest industrial pursuit in the State, and, being the paramount interest, anything that tended to directly encourage the developement and increase of the mineral resources of the State was for the benefit of the public. Georgia the same result was reached, but upon different It was there held that as gold and silver were the Constitutional money of the country, the facilitation of their production was for the public good, as tending to preserve and maintain a sufficient quantity of the lawful circulating The decision was given before the free coinage of medium. silver became a pronounced political question, and would not

be deemed of persuasive authority in single gold standard communities. This much on questions of detail and incident.

There is a broader question underlying the entire subject, which is attracting the attention of people everywhere in the mining region and must have an answer in congressional legislation. The law of apex and extra lateral right is casting its mighty shadow over the enterprises of the present and future. No legislation can of course relieve against past or present conditions, but a change in the Federal law, restricting its grantee to the depths as well as the surface, within the planes of his surface boundaries, will in its application to cases of the future make titles simple and clear, which otherwise may be confused and clouded. I have not the time to present the argument, nor is it necessary, but I invite your earnest and careful attention to the subject.

By the school law of 1897, the control of the examination of teachers is practically turned over to the County Superintendent. He appoints two persons resident of the County as associate examiners. He has power to remove both or either of them for misconduct or incapacity (of which he is the sole judge) and to fill vacancies thus made. He directs the times of holding sessions for the examination of teachers, and the test of applicant's knowledge, understanding and aptness to teach and govern, is based not only upon a percentage of correct answers required by the rules, but "other evidence disclosed by the examination, including particularly the Superintendent's knowledge and information of the candidate's experience and ability as a teacher".

-Revised Statutes, Sections 1794-1795.

It was quite unnecessary to resort to so much circumlocution to accomplish the desired end. The intent to place the sole power of selecting and employing teachers in the hands of the County Superintendent, shines through the petty disguises of the act as clearly as if specially declared. The law should forthwith be amended so as to strip the Superintendents of these large powers. Some changes are made in the law of succession. The most important appear to be those relative to the interest of the wife in the husband's real property, and the rights of illegitimate children. Dower is abolished, but where the wife has made no relinquishment (in the vernacular of the act) of her rights, upon the husband's death she succeeds in fee simple to one-third in value of all the legal or equitable estates in real property possessed by the husband at any time during the marriage. This third is not subject to debts, other than those created or secured by vendors' or mechanics' liens, and taxes. Property conveyed by the husband when the wife at the time of conveyance was not, and prior thereto had never been, a resident of the Territory or State is excepted.

This perplexing discrimination against non-residents will probably make a text for judicial speech, when the question is considered in the light of the Constitution of the United States. Passing all Constitutional questions, this kind of legislation is narrow and provincial and is not conducive to the highest standard of inter-state comity.

By act approved April 3, 1896, and carried into the revised Statutes as section 2850, with the purpose of legitimating polygamous children, the legislature enacted:

"That the issue of bigamous and polygamous mar"riages heretofore contracted between members of the
"Church of Jesus Christ of Latter Day Saints, born on or
"prior to the fourth day of January A. D. 1896, are hereby
"legitimated; and such issue are entitled to inherit from
"both parents, and to have and enjoy all rights and privileg"es to the same extent and in the same manner as though
"born in lawful wedlock."

This act cannot of course be operative in any case where the descent was cast prior to date of enactment. As to future cases even, its constitutionality it would seem, may be questioned under the prohibition against special laws changing the law of descent and succession. The children

of bigamous and polygamous marriages contracted between members of one church or sect are declared capable of inheriting, while the issue of unlawful marriages contracted between persons not members of the particular church are excluded. If this act shall be found to be invalid, then the law upon this question seems to be in this condition. children of bigamous or polygamous marriages, known as Mormon marriages, born prior to January 1st. 1883, and all illegitimate children born between February 19th. 1887, and February 20th. 1888, are legitimated. All children of bigamous or polygamous marriages born after January 1st. 1883. and before February 19th. 1887, and all children born out of lawful wedlock after February 20th, 1888, and before March 9th. 1896, when the first State law was passed, are illegitimate. And all children born out of lawful wedlock, but not of bigamous or polygamous marriages, between March 9th. 1896 and January 1st. 1898, are illegitimate. This result will be reached upon an examination and comparison of the Act of the Territorial Legislature of 1852,—Section 2742. Compiled Laws, Section 7 of the Act of Congress of February 19th, 1887, the Act of the State Legislature approved March 9th. 1896. Revised Statutes Sections 2848-9, and the Act of the State Legislature approved April 3rd, 1896, Revised Statutes Section 2850.

While the law for the future upon this subject is apparently definite and certain, as it should be, it is still true that the confusion and contradiction of the past legislation has produced results not at all anticipated. I have in mind a case where a child was born of a polygamous marriage, in 1884, and the descent was cast prior to January 1st. 1897. This child was by express act illegitimate until State-hood, and the first law enacted thereafter, that of March 9th, 1896, by precise exception, also excludes him. Unless, therefore the later act, above quoted, shall be valid, he cannot inherit from the ancestor now dead. The objection to this act has already been suggested.

The late Territorial Supreme Court in a series of cases, beginning with "Hess vs. White" with persistent obstinacy, sustained a Territorial law authorizing a verdict in civil cases to be rendered by nine jurors, and its successor the State Supreme Court adhered to these decisions. A number of cases involving this question were appealed to the United States Supreme Court. All have been reversed and remanded for a new trial. In "American Publishing Co. vs. Fisher", the Court has explained that the Constitution of the United States meant something, and as the law of the land, was operative even in a Territory where, as it was contended the advancement of legal science and the progress of society demanded its amendment by legislative enactment.

In June 1897, the Supreme Court in the case of "State vs. Kessler", by a divided Court held, that upon an indictment for murder, a verdict and judgment for a lesser offense embraced in the indictment being set aside upon the defendant's motion, he could be tried again upon the whole indict-At the first trial the defendant was convicted of ment. murder in the second degree, but on the second the verdict charged him with voluntary manslaughter. The question was presented through exceptions reserved to the empaneling of the jury when the State was permitted to exercise more than three peremptory challenges. This grave question of Constitutional law is involved in a confusion of authority with probably the major number of decided cases against the conclusion here. As the decision is reached through the concurrence of a District Judge (temporarily sitting) with one Justice of the Court, we can hardly assume the question to be finally determined.

The Constitution provides that:

"All civil and criminal business arising in any County "must be tried in such county, unless a change of venue be "taken, in such cases as may be provided by law".

In "Konold vs. The Rio Grande Western Ry. Co.", an

action commenced in Weber County, to recover upon a cause of action arising in Emery County the Court held unanimously that the venue was wrongly laid and there was no jurisdiction to proceed.

The Court cites but one authority directly in point, but the reasoning of the opinion warrants the conclusion. There would seem to be no question as to the meaning of the language of the Constitution. The matter is one of great concern. The inconvenience, expense and loss which will necessarily result as the law now stands, is apparent. I invite your attention to the consideration of an amendment to the Constitution, excepting from the above provisions certain specified cases, which should be brought to the attention of the legislature.

Article 4, Section 9, of the Constitution, gives a right of appeal to the Supreme Court from all final judgments of the District Court.

In "North Point Consolidated Irrigation Co. vs. Utah and Salt Lake Canal Co.", the Court held that an order granting an injunction pendente lite was not a final judgment and dismissed the appeal. In subsequent cases it held that an appeal would not lie from an order denying a motion for a new trial, nor from an order setting aside a judgment. In the later case of "Blythe & Fargo Co. vs. Swensen", by a combination of two judges against the one who wrote the opinions in the preceding case, the Court decides that an appeal will lie from an order refusing to set aside the judgment.

As before noted, this question was brought to the attention of the legislature by a Committee of the Association, and a constitutional amendment is to be submitted to the people this year as follows:

"Article 4, Section 9. The Supreme and District "Courts shall have such appellate jurisdiction as may be

"provided by law, Provided, That from all final judgments of the District Court shall be a right of appeal to the Su"preme Court." Should the amendment be adopted, the necessary legislation to carry it into effect should receive the careful attention of the Association.

Four other amendments are to be submitted to the popular vote at the next general election.

Senate Joint Resolution number 6, proposes to amend Article 6, by adding a new section, number 32, as follows: "Every Bill and joint resolution signed by the presiding officer of each house of the Legislature, as provided in Section "24 of this Article, and signed by the Governor, or passed "by both houses over his objections, as provided in Section "8, Article 8, of this Constitution, and deposited in the office of the Secretary of State, shall, in all Courts be taken and "treated as conclusive evidence of its due enactment and "authenticity."

House Joint Resolution number 23, proposes to amend Section 3, Article 13, by adding:

"And that no tax shall be collected on household furniture when the assessed value of the same is \$200. or less".

Senate Joint Resolution number 9, proposes to amend Section 16, Article 7, by adding the following:

"Provided, that the Governor shall appoint no person dur-"ing such recess of the Senate (who has been previously "nominated for the same office) and) whose name has been "presented to the Senate at the preceding session thereof "and confirmation refused."

I quote this precisely as it appears in the Journals, punctuation, parenthesis and all. It is unfortunate that more attention was not given to the frame and style of these amendments.

House Joint Resolution number 7 proposes to amend Section 6, Article 10. This Section now reads:

"In cities of the first and second class the public school system shall be maintained and controlled by the Board of Education of such cities, separate and apart from the counties
in which said cities are located.

The amendment strikes out the words "maintained and" in the second line. This is an attempt to restore the old conditions that existed before the adoption of the Constitution, which bore hardly upon the taxable property in cities of the first and second class, and is a direct attack upon the present system of the application of the moneys raised by taxation for school purposes in such cities. Forceful and intelligent consideration should be given to the question at the next election.

It will be well to remember that the result of the election will be determined by a majority of the votes cast for or against an amendment. Electors who do not vote upon the question, although voting at the election, are not counted. Therefore a negative vote must be a distinct no upon the ballot.

A discussion of the law of champerty was precipitated a few months since in a personal injury case against a railroad company, because there appeared to be a contract whereby plaintiff's attorneys agreed to pay advanced costs for filing actions and serving summons, and the railroad fare of necessary witnesses, in consideration of a certain percentage in case of recovery. Upon this question it is suggested on the one hand, that there was no law prohibiting champertous contracts, and on the other, that the common law was enforced in the late Territory and also in the State after admission, and that by that law champerty is denounced. However that may be, the common law of England is now, so far as it is not repugnant to the Constitution and Statutes, State and Federal, the rule of decision, and in the future, questions such as this, may in the absence of statutes, be referred to that law for decision.

In the Federal Courts some notable judgments have been delivered which would be of interest to consider. pecially is this true of the opinions of the Supreme Court in expounding and I may say at the same time destroying, the Interstate Commerce Law. I must be content, however, with a few observations upon the evolution of the law of injunction. The marvelous growth of the judicial power in this particular, during the past few years has been and is the cause of much anxious discussion. I refer to a few of the cases growing out of the labor troubles as best illustrative of my subject. In the case of "In Re Doolittle", 23 Fed. 545, decided March 1885, an interference by strikers with property in the hands of Receivers, was punished as a contempt. In his opinion, Brewer the Circuit Judge, said: "It "is not the mere stopping of work, but it is preventing the "owners from managing their engines and running their "cars. That is where the wrong comes in. Anybody has a "right to quit work." You will see in the later cases how the doctrine was enlarged in its application. In "In Re Higgins", 27 Fed, 444, decided in April 1886, Circuit Judge Pardee, used this language: "The employes of the receivers, "pro hac vice officers of the Court, may quit their employment "as can employes of private parties or corporations, provid-"ed they do not thereby intentionally disable the property; "but they must quit decently and peaceably. When they "combine and conspire to quit with or without notice, with "the object and intent of crippleing the property or its oper-"ation, I have no doubt that they thereby commits contempt." In "Toledo, Ann Arbor and Northern Michigan Ry. Co. vs. Penn. Co.", 54 Fed. 746, Judge Ricks, while admitting the right of employes to quit the service at will, restricts the exercise to proper times and under what may be termed consenting conditions. But a pretense of quitting made for the purpose of aiding a boycott against another road was denied effect, and he imprisoned an engineer for contempt for violating a mandatory injunction, in refusing to receive and

handle cars delivered by the offending road. A few days afterwards Circuit Judge Taft, in the same case issued a mandatory injunction against P. M. Arthur, Chief of the Brotherhood of Locomotive Engineers, restraining him from issuing, promulgating or continuing in force any rule or order of said Brotherhood, which shall require or command any employes of any of certain railway companies, defendants, to refuse to handle and deliver any cars of freight in course of transportation from one State to another to the complainant, or from refusing to receive and handle cars of such freight which have been hauled over complainant's road; and from endeavoring to persuade any of the employes of the defendant companies whose lines connect with complainant's line, not to extend to the complainant the same facilities for interchange of Inter-state Commerce as are extended by said companies to other railroad companies. The reasoning of the Court by which this conclusion is reached. is set forth in an opinion of marked strength and ability. is said, that the acts threatened, were in violation of the Inter-state Commerce Law, and that injury to property rights and the public was involved; that the employe while doing the work of the company is the company, and is fully identified with the corporation in the discharge of its public functions, that if persons assume to do the work of the defendant companies they must do it in a way which will not violate the rights of the complainant, and must conform to the injunction of the Court granted to preserve those rights: that therefore both corporation and men, master and servants should be enjoined from refusing to handle cars and freight coming from complainant's road. As in the other cases, it was expressly conceded that the employes might quit the service. The next inquiry was, whether, the power to enjoin the engineer in the premises having been satisfactorily established, the Court could go further, and enjoin Arthur from issuing an order which it was contended would compel the men to refuse to haul the cars of complainant.

There was a rule of the Brotherhood requiring the members to refuse to handle property of an offending railroad when a strike upon such road was ordered by the local section and consented to by the Grand Chief. The question was, as stated by Judge Taft, whether Arthur could be enjoined from ordering the engineers to carry out this rule. the reasoning of the Court does not seem to be so persuasive. If, it is said, the engineers may be enjoined, Arthur certainly may be restrained from ordering them to carry out the rule. That his order will be obeyed, because the penalty of disobedience is expulsion; the engineers will refuse to handle complainant's freights; the defendant companies will probably be co-erced thereby to refuse complainants freight; the inter-state business of complainant will be interrupted, the injury is irreparable and the remedy at law inadequate. The injunction was granted, and Arthur was compelled to rescind his order already made. The basis of the conclusion is, that the men will obey Arthur's orders. and will disobev the order of the Court. That is to sav. the men are already enjoined, but as they will not stay enjoined if Arthur interferes, therefore Arthur must be enjoined from interfering. Without stopping to discuss this judgment, we may pass on, with the observation that it makes a decided advance in the progress of injunction evolution. "Farmers Loan & Trust Co. vs. The Northern Pac. Railway Co.", 60 Fed. 804, these cases were followed and approved, but on appeal, the Circuit Court of Appeals for the Seventh Curcuit through Mr. Justice Harlan, modified the rule announced so as to decline the jurisdiction to enjoin the quitting of service, which to all ordinary sense means simply to enforce contracts for personal service. But a still further advance was made in the Federal Courts in their government by injunction. In "Mackall vs. Ratchford", 82 Fed. 41. an injunction had been granted restraining the defendants from entering upon the property of the Montana Coal and Coke Company for the purpose of interfering with the em-

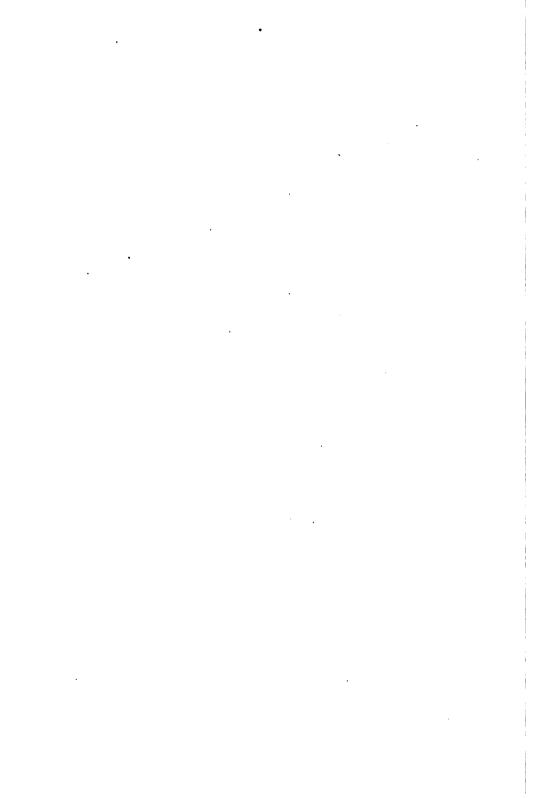
ployes of said Company, either by intimidation, or by the holding of either private or public assemblages upon said property, or in any way molesting, interfering with, or intimidating the employes of that company so as to induce them to abandon their work in the mine. A company of marching strikers for three days, in the morning and afternoon, when the employed miners were going or coming from their work, marched and counter-marched along the county road, passing the mine opening, but not going upon the company's property. This body of men, over two hundred in number, in the morning before daylight was halted in front of the mine opening, and the men placed in position on each side of the highway for at least a quarter of a mile. The Court (Judge Goff) concluded that the intention was to interfere with the operation of the mine and intimidate the This conclusion seems the more remarkable, in the light of the words of commendation bestowed upon the strik-Except for their disrespectful language concerning the injunction, we are told, "the demeanor of those who marched has been most commendable. They have indulged in no threats, nor has loud, boisterous, or taunting language been They have been sober and decent, mindful of their own interest, and with the exception noted, respectful of the rights of others, and observant of the requirements of the law." Nevertheless the Court imprisoned for the contempt. mercifully imposing light sentences, as becometh a supreme power impressed with the fact, that the criminals, "were thoroughly honest in their claims, that they had a right to march and act as they did "on the people's highway.

From these decisions it would appear, that while a theoretical right to quit the service and the use of a public highway are conceded to the citizen, still the right is reserved to the Courts to in all cases determine whether the self discharge of the employe is in good faith, and whether the use of the highway by the unemployed is for a proper purpose. In other words, the secret intention is to be discovered by the

Court and the man held accountable. The last case is a remarkable illustration of this. The acts of the marching men were all orderly and lawful. They avoided the complainant's property, but did walk in the public road which unfortunately ran near by the mine opening. The Court thought that a body of men assembled together under such circumstances must of necessity be a menace to the working miners. Thus, has the law of injunction so progressed, that its very genesis is lost in forgetfulness. The question is serious, and I doubt not will make a place for itself in the governmental discussions of the near future.

In concluding this address, I desire to draw your attention to the object of this Association, which is: "The elevation of the standard of professional learning and integrity; to inspire the greatest degree of respect for the efforts and the influence of the Bar in the administration of justice; and to cultivate fraternal relations among its members."

These purposes should be ever borne in mind. Each of us owes a duty to the Association and to the profession, which should inspire a cheerful devotion of time and labor when necessary. Members should attend each annual meeting, and those designated by the Executive Council to prepare and deliver addresses, should respond promptly and faithfully. In this way only can interest be maintained and the highest purpose of our union be subserved.



"SOME RECENT CHANGES IN OUR LAWS."

BY RICHARD B. SHEPARD.

Mr. President and Members of the State Bar Association:—

A few days ago a request was made of me by the Executive Council to prepare a paper to be read at this meeting of the Association, upon the changes made by the last legislature in the existing laws of the State. Agreeable to my promise—although the subject is an extensive one and I have had but little time since the request was made to treat the same as it should be—I have prepared a paper upon the subject which will deal with some notable changes made in the Statute Law of our State.

Before alluding to my subject, will say that five Constitutional amendments proposed by the last legislature will be submitted to the people of this State for their ratification or rejection at the next general election in November, 1898.

While all of these proposed amendments may not interest the legal profession, yet there is one relating to the appellate jurisdiction of the Supreme and District Courts that should have the active support of every lawyer and citizen in this State, and it behooves this Bar Association to see to it, that it gets its proper support and that it is adopted; not so much to aid lawyers, as their clients in getting their rights adjudicated in the Courts with the least possible delay. The present section of the State Constitution to which the amendment mentioned refers to and proposes to amend, provides for appeals from final judgments of the District Courts only. This section is unfavorably known to the Bar as it is construed by the Supreme Court; and a mere reference to the same as it exists is all that is necessary.

The amendment proposed leaves the question of what orders, interlocutory or otherwise of District Courts may be appealed from, to the future legislatures of this State, with this exception, viz; That a right of appeal shall exist from all final judgments of the District Courts. The concensus of opinion of the members of the last legislature was that the question of what orders and judgments should be appealed from could be safely left in the hands of the law-making pow-To change this section of the Constitution the State should not be compelled to go through the expensive medium of repeated amendments to this section, should future amendments adopted prove inadequate to the wants of the In other words, the question of appellate jurisdiction, should in my opinion always be left in the hands of the law-making power. So if it should be proven by experience that appeals were granted from too many orders or that more orders should be added to the list that might be appealed from, it could be remedied easily and inexpensively by the State Legislature.

Besides this section as it now exists is cumbersome, not explicit, liable upon future adjudications of the Supreme Court to be further restricted as to questions that may be appealed from and contains within itself mattters of procedure that should be within the exclusive jurisdiction of the legislative branch of our State Government.

The amendment proposed has the sanction of the great majority of the States of the Union and is incorporated into their constitutions and should become part of ours, thereby placing the question of appellate jurisdiction—subject to change whenever desired or necessary—in the keeping of the Legislature.

I did not expect to discuss the question of the proposed Constitutional Amendments at all and would not, had it not been owing to the fact that the one referred to is necessary in my opinion to people of the State for the reason that

the right of appeal from many orders, interlocutory and otherwise is just as essential to the enforcement of rights and the redress of wrongs, as the right of appeal from a final judgment. While the other amendments proposed are to some just as important as the one I have spoken of, but to the people as a whole this question of appeal is of more importance than the others and should be settled and the amendment adopted, and the Bar of the State should see to it, that it becomes a part of the Constitution of the State.

I am informed that the President of your Association will amplify upon and discuss all these proposed amendments, so I will not further allude to them.

It was impossible in the time had for preparation and the length of time allowed, to prepare a paper that would not wear upon your patience and at the same time cover the ground fully as it should be. Such being the fact I will confine myself to a few important changes in the substantive law of the State and the procedure in the District Courts.

A law was passed relating to assignments for the benefit of creditors. While this law, to my notion, is not the best law on the subject, it is the best one obtainable at the time and one that is far in advance of assignments made under the common law rule. Under it, while preferences can be given as at common law, yet it is impossible for a party as formerly to appoint a friend as assignee and virtually administer the trust himself and for his own benefit. It also explicitly provides the mode of procedure and places the whole property and the execution of the trust in the hands of the Court, and provides that the assignee appointed by the debtor shall give bond, be under the control of the Court and may be removed upon the application of a majority of the creditors in amount, and another appointed by the Court.

But the best feature of the law, as I consider it, is that anything connected with the property conveyed or with the matter can be fully determined in the assignment proceedings without bringing independent actions at great cost to interested parties. While as I said before, the law is far in advance of what is known as the common law assignment and is the best that could be obtained at the time, yet I think it should be amended by disallowing all preferences except for labor performed within a reasonable time; and that there should be inserted in the law a section prohibiting an insolvent debtor from conveying away all his property by way of a chattel mortgage to some favored friend, or if it is done in that manner, that the Court should treat it as a general assignment for the benefit of creditors and administer it accordingly. With these amendments, the law would be a model one, but as it is, it is far preferable to the old procedure.

Whatever attorneys may think of the laws as a whole, I am sure there is one that they will take no exception to. I refer to the article on attorneys and counselors, in which the important changes made are: Admission to the bar and the lien given to attorneys on causes of actions in suits brought by them.

By this law, after January 1st., 1898, a person can be admitted to practice as an attorney by the Supreme Court only, but when so admitted can practice in all the Courts of the State. This takes from the District Courts the power to admit a person to practice at all, and rightly, as I look at it; for with the power of admission granted to the Supreme Court only, and the price of admission raised to \$25.00, it seems to me a higher standard will be maintained and a less number of undesirable and incompetent persons will be admitted to the bar of the State. While at the same time any person having the necessary qualifications will find that no impediments are thrown in his way to reach the desired goal.

The other change noted, viz: The statutory lien given to attorneys is what has been long needed in this State. This law provided that an attorney shall have a lien for his

fees from the time of filing the complaint or the filing of an answer containing a counter claim upon the cause of action of his client, which cannot be taken from him or released without his consent. The lien given to attorneys is in strict keeping with the laws of other States and nothing can be urged against it. A lawyer has the same right to be protected as any other laborer and while all these had liens provided for them in the Code the Legislature concluded that they would treat all alike and passed this section, giving them a lien, without dissent. With this lien an attorney can sleep sounder, knowing that his pay for his services is secured and that no settlement can be made without his consent or he be beaten out of his fee by a dishonest client.

Further the effect of this law will be, that all actions will be settled between the attorneys to the action and not between litigants, who may pocket the proceeds and let the attorney, to use a common phrase, "whistle for his pay". This act alone should enhance all attorneys earnings, for by it they will get their dues, which heretofore have at times been lost, and at the same time get that and that only, which equitably and legally belong to them.

A great deal of the red tape connected with the execution and recording of chattel mortgages has been done away with. For instance the acknowledgment is dispensed with. Now, in place of formerly recording at great length and great cost, all that is necessary to do is to file (not record) at a small cost the original mortgage, or a copy of the same.

Further the life of a chattel mortgage is now five years from the filing thereof and this without regard to the time of the maturity of the debt, provided however, to keep it valid for this length of time as against purchasers or mortgagees in good faith without notice and creditors of the mortgager, an affidavit must be filed by the mortgagee, or some one in his behalf, every year, which must set out the amount due on said mortgage and be attached to the mortgage.

This provision in regard to the life of a chattel mortgage is a vast improvement over the old system of renewals which suggests itself to an attorney without comment by me.

Another thing of vast importance to the people is, that exempt property of any person can be mortgaged if single and, if married with the consent of his wife, but not otherwise; while formerly it was doubtful whether exempt property could be mortgaged at all or not, there is no question about it now. Prior to the enactment of this law, exempt property could be sold or pledged, but not mortgaged: and although a person might have a large amount of this class of property he could not mortgage it no matter how badly he needed the money; but he could pledge or sell it, which often times placed him in a worse condition than if he mortgaged it. In one case he lost title to it and in the other lost posession; while, as the law now exists, if he can get consent of his wife he can mortgage to the same extent as he can property not exempt. Viewing it from the standpoint of a married attorney it is a boon indeed, for if you can get the consent of your wife, you can play havoc with your library and office furniture by mortgaging it and still keep it without parting with the possession as with a pledge or pawn-at least until the debt matures. A valuable right to any one even if chances are against you, that you cannot pay the debt secured, for the reason that there can be no forfeiture without foreclosure.

Married women were given full and absolute contractual rights, the same as if sole, which is of more importance in some respects than the mere privilege of voting. She can sue and be sued without her husband's name being joined with hers in the action. And if necessary and she wishes a little legal recreation in the family, can bring an action against the "old man" direct, should he at any time get possession of any of her property and forget—as is often the case—to return it to her. In this connection I will state that dower and curtesy are both abolished, but in lieu thereof, the wife, if she survives her husband, is given a fee simple title of one-third in all her husbands real estate, possessed by him at any time during marriage, to which she has made no relinquishment. This fee simple title is preferable to any dower interest, for in many cases a dower right is of little value, while in all cases a fee simple title must be of some.

A just and equitable mining law, applicable to all mining districts in the State was passed. By this general law a uniform system known to all has equal operation throughout the State, which is more desirable and better than the ever changing rules of various mining districts. And a person locating a mining claim and perfecting his title thereto has only to look to this law and not to the different rules and imaginary lines in many cases of the various mining districts. While this law may not be just what it should be, it can be said that it has made mining regulations uniform and is universal in its application throughout the State, which is a great improvement over local customs, rules and regulations it took the place of.

Having noticed some changes in the general laws, I will direct my attention to changes in the Code of Civil Procedure. The first change that presents itself to my mind, is that of the statute of limitations. Changes were made increasing the time allowed for bringing actions upon judgments to eight years; on written instruments to six years and upon open accounts to four years with a further amendment that any payment in any case founded upon contract, an action may be brought within the respective periods of time allowed after said payment. In other words, if a payment be made upon a promisory note the payee has six years after the date of payment to bring his action before the statute takes effect. Whether this change, except the provision as to payment, can be justified as a necessity or was desirable at all, the speaker

doubts very much; for above all things a statute of limitations should be fixed and stable and not vary with every recurring session of the legislature. The law repealed had been in existence for years and there was no necessity for extending the same. But be that as it may, with these changes, other changes should have been made to correspond with the ones adopted, viz-It will be noticed that an action can be brought upon the judgment of a Justice of the Peace within any time not exceeding eight years from its rendition; while actions to recover real estate can be brought within seven years only after the cause of action accrued. Was this an over-sight or did the legislature intend to give more weight to a judgment of a few dollars rendered by a Justice of the Peace, than to a valuable tract of land worth thousands of dollars? If not, why make the limitation one year longer. Another thing, the old law, as to the time within which a judgment was a lien and upon which an execution could be issued upon it, remains the same as before, five years. Why was this discrepancy of three years left between the lien of or the enforcement of the judgment and the right to sue upon it? Probably an over-sight, but if such it is, it is a glaring one that should not exist. The duration of time should be equal and should have been changed on this point by the legislature to correspond.

An idea has grown up with certain persons that extending the time of limitations, enlarged the time to bring actions barred by the prior law, provided that the time limited in the amended act had not run from the maturity of the cause of action. In this they are in error, for any cause of action barred by existing laws at the time the act of 1897 took effect remained barred the same as if this act had not been passed. Section 3167 Compiled Laws of Utah, 1888, provides this and the change in the time was only made as to certain sections of the Code of 1888, while the section quoted remained intact and in full force. Also see Section 2900, Revised Statutes of 1898.

The manner of commencing action has been changed in this; that the attorney or party bringing an action issues the summons in place of the Clerk, and any party over twenty-one years of age and not a party to the action may It is not even required that the party serving shall be a resident. How this provision as to the issuance of summons will work, time will tell; but there can be no serious objections to it. as I take it. But as far as service of summons is concerned my opinion is that the service should be confined to the proper officer, viz-the Sheriff of the County. It will be remembered by the members of this Association, that many grievances and some frauds grew out of a similar practice in the Justice Court in times past and to avoid this the law now is that the service of a summons out of Justice Court must be made by an officer; while in the District Court it may be made as above stated. It would have been better to have summons out of all Courts served by some officer, who was responsible by bond for his acts; a private party might and in most instances would correctly state his acts by his return, but unlike the return of a sheriff it could not have the weight that ought to be connected with writs issued out of our Courts, for the reason that a Sheriff is under heavy bond to perform the duties of his office according to law, while a private party is under no such restrictions.

Our system of pleading remains in substance as formerly, except the old system of cumbrous, irrational and illogical specific denials have been done away with and in lieu thereof the general denial is substituted. Not substituted entirely—for the pleader if he wishes to wade through the mazes of a specific denial can do so; but having the right to deny generally, which is just as effectual as the specific denial, it is fair to assume that it is a substitute, for the reason that it will take but a little time for the specific denial to become obsolete and be piled away in the lumber room of the law. In my judgment this is a great advance in pleading,

for the general denial has all the merits of, but none of the faults of a specific denial.

In trials by jury in civil cases the only change is as to the time and manner of charging the jury by the Court. The charge must be in writing, unless waived, and delivered by the Court to the jury before the arguments of counsel.

To some this may appear as a great innovation and one that should not have become a law; while to others, who have practiced under a similar law it is the desideratum desired. Having had some experience in states where this law is in effect, would say, that it has stood the test of time and is preferable in many respects to charging after argument and orally, in this, viz: first, the charges of the Court are shortened; second, the lawyer in arguing his case knowing just what law has been given by the Court, can apply the facts to the law as given and make a more logical, forcible and compact argument and in less time, than where he has to go over what he thinks is the law, use his time expounding it to the jury when the Court may never give it at all: third, the system causes fewer mis-trials, for the reason the jury takes the written charge with them, and have the law of the case as given them by the Court and do not have to refer to their memory as to what law was cited and whether by Judge in his charge or attorneys in their argument.

As my time is limited I cannot say more upon this topic, although much more could be said in its favor, but would say that where this system has once been tried, it has not been departed from, nor do I believe it will be here when once given a fair trial.

Another change of importance I should have mentioned before while treating of the statute of limitations but as I forgot it then will speak of it now. The legislature provided that where an action fails otherwise than on its merits and the statute has run, the plaintiff may bring a new action within one year from such failure.

Many rights have been lost heretofore, by a party being compelled to dismiss his action after the time limited for bringing it had run on account of witnesses being absent and for other causes. But hereafter when this occurs, he will have one year to bring a new action. This section is a step in advance and is required to protect absolute rights in many cases.

One other subject and I shall leave the further changes of the law. I refer to new trials and appeals. The statement on motion for a new trial has been abolished. The motion must be filed within five days and specify the errors alleged particularly and is either heard upon affidavits or the minutes of the Court or both.

This is an improvement on the old practice and would be better still if only the statutory grounds were required to be stated in the motion. If the motion for a new trial is over-ruled, the moving party has ninety days to prepare his bill of exceptions to be used on appeal. If a new trial is not asked for but the party wishes to appeal without, a bill of exceptions is prepared in a similar manner as under the old The time to appeal has been shortened to six practice. from the entry of the judgment months The record on the appeal shall consist of the appealed from. judgment roll and of the bill of exceptions, if there be one: otherwise on the judgment roll alone. The usual notice of appeal is yet necessary; but the record on appeal is entirely different from that required in the former law. The original papers go up as the transcript to the Supreme Court, properly certified by the Clerk but the trial Court may allow copies of the same to be used in lieu of the originals. have merely mentioned the changes in new trials and on appeal in a desultory way as space is important, and time too, for that matter. Suffice it to say that vast improvements have been made as I look at it in our appellate practice, reducing it nearer to a system and science than formerly and making it much cheaper to litigants, but there is vast room

for further improvements in this line which will come as time shows the necessity for further changes.

I have trespassed upon your time too long already in pointing out what the changes in our laws are and where the improvements exist over the old laws, yet I cannot desist from calling to the attention of the Association one proposed law of great merits that failed for certain reasons.

If there is one thing more desirable than another in law, it is the easy facility in getting rights adjudicated by the Courts and as cheaply as possible. There is one crying shame in the expense connected with an appeal to the Supreme Court. Having in view the idea that litigation should be cheap so that rich and poor alike can go into Courts and prosecute their appeals and at a reasonable price, the Speaker introduced a bill into the last Legislature that passed both houses almost unanimously, providing that in all appeal cases to the Supreme Court the printed abstracts of the record should be abolished and the cases heard upon the transcript and briefs of attorneys. This went to the Governor who laid it carefully away in his desk until after the legislature adjourned, when he vetoed it, upon the ground, that one co-ordinate branch of the State government should not entrench upon the rights of another and that the legislators were not elected to pass laws regulating procedure in Courts But that function should remain with the Courts at all. alone. A weighty reason, indeed. This bill failed to become a law, from the simple fact that the Constitution gave the Governor a right to hold the proposed law ten days after the legislature adjourned, and then veto it, giving the reason for his act that he did.

A case where one person was wiser than sixty-three members of the legislature. No not wiser, but more powerful. To my notion the printed abstract is a useless and costly incumbrance upon litigants of this State and should be abolished at the first opportunity. I have estimated the cost

per annum of the abstracts printed for use in our Supreme Court, to the litigants of the State and find that it requires at least \$10,000 per annum and perhaps more to comply with this rule of the Supreme Court—on an average of at least \$100.00 for each appeal. Too much to pay for justice! There is a case now pending in this term of the Supreme Court the abstract in which cost in the neighborhood of \$400.00 and the respondent's abstract \$50.00.

It is useless for the reason that it is easier to argue a case direct from the briefs to the transcript of the record than it is to refer from the brief to the abstract and from the abstract to the transcript. Many times abstracts are gotten out by both parties, which only increases the confusion and cost. If the transcript was used alone and referred to, directly in the briefs, it would speak the truth better and more to the point than any abstract worked out of a record by an attorney of one of the parties, who unconsciously or otherwise colors it wherever it will bear it, favorably to his client. The only thing that can be said in its favor is, that it is pretty easy to handle. But we must remember that it is a costly luxury and one that can be dispensed with better than any other superfluous appendage connected with our laws.

The Supreme Court of Kansas, with the same number of Justices and with six times the amount of business to do that our Supreme Court has, in thirty-seven years of its existence has never yet seen a good reason for putting the expense of printing abstracts upon litigants that seek justice in that Court. The first abstract is yet to see light on Kansas soil. Cases in that Court are tried wholly upon the transcript and briefs.

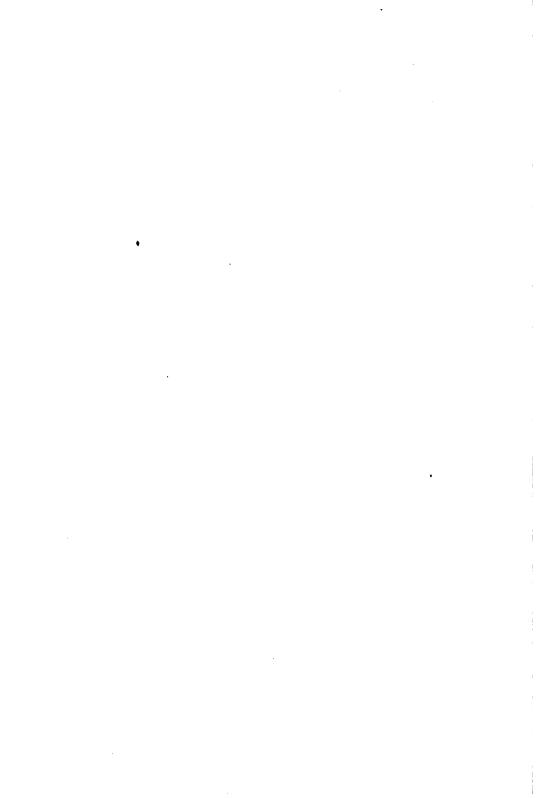
Let us do our best to abolish it; it is useless, costly, and no good reason exists or ever did for its existence. I believe in cheap litigation without any expensive luxuries attached and one of the first luxuries to be dispensed with is the pretty, yet costly and useless little abstract. If we must

have abstracts why not print them with old Roman faced type on deckle-edged Japan paper, with wide margins. Veritable, editions de luxe.

A litigant should be allowed to have his litigation as cheaply as possible, commensurate with the proper dispatch of business in the Courts and should not be loaded down with any useless and unnecessary cost and this Association should work to that end in the interest of the people, litigants and the Bar.

The length this paper has assumed, precludes me from noticing further many other important changes made in the laws and I will desist from further commenting upon the same. But I wish to say one word in regard to the Revised Statutes of 1898 as a whole; while there may be parts of the same that may be justly criticized, yet they are a vas improvement on the heterogeneous mass of laws which it supplanted. Some parts of the same as with all work, doubtless could be improved upon, but the people of the State, especially attorneys and judges have reason to be proud of the fact that we have the concise and compact Code of Laws which we now possess.

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CONSTITUTION AND BY-LAWS OF THE STATE BAR ASSOCIATION OF UTAH.

CONSTITUTION.

ARTICLE I. The name of the Association shall be The State Bar Association of Utah.

ARTICLE II. The object of the Association shall be the elevation of the standard of professional learning and integrity; to inspire the greatest degree of respect for the efforts and influence of the Bar in the administration of justice; and to cultivate fraternal relations among its members.

ATICLE III. The officers of the Association shall be a President, a Vice-President from each Judicial District, Secretary, Treasurer, an Executive Council of five members, and a Committee on Grievances consisting of three members, which officers shall be elected annually and hold until successors are elected and accept.

ARTICLE IV. The President shall deliver an address at each regular annual meeting of the Association, and the duties of the President Vice-President, Secretary and Treasurer shall be such as usually pertain to those offices respectively.

ARTICLE V. Regular meetings of the Association shall be annually held at Salt Lake City on the second Monday in January, at 7:30, p. m., at the Supreme Court room, for the election of officers, and for addresses and discussions; also for the transaction of any other business of the Association. The President and the members of the Executive Council and Committee on Grievances shall be elected at the annual meeting by ballot.

Special meetings may be called at any time by the Executive Council or the President, and must be called when a request signed by fifteen members of the Association is made therefor. And the notice of such special meeting shall be by publication in the daily papers of Salt Lake City, Ogden and Provo, or by personal notice sent by the Secretary to each member of the Association; in either case not less than three days notice of the time and place of holding such meeting shall be given.

- ART. VI. A quorum for the transaction of business shall be twenty members.
- ART. VII. No person shall be admitted to membership in this Association, who is not a member of the Bar of the Supreme Court of Utah
- ART. VIII. All applications for membership at the annual meeting shall be referred to the Executive Council, who shall report on the same to the Association, with their recommendation, and no person shall be admitted to membership except by a two-thirds vote of the members present. During the interval between annual meetings, applications for membership may be determined by the Executive Council. Each member shall pay an admission fee of five dollars, and annual dues, after the first year, of three dollars. Any member may be expelled on a vote of a majority of the members of the Association.
- ART. IX. The Executive Council shall manage the affairs of the Association, subject to the Constitution and By-Laws; it shall, also, on or before the first day of May of each year, designate such number of members not exceeding six, to prepare and deliver or read, at the next annual meeting thereafter, appropriate addresses or papers upon subjects chosen and assigned by the Council, to each of such members as may be so selected for such purpose.
- ART. X. All addresses delivered and papers read before the Association, a copy of which is furnished by the author, shall be lodged with the Secretary. The annual address of the President, the reports of committees and all proceedings of the annual meeting shall be printed; but no other address delivered or paper read shall be printed except by order of the Executive Council.
- ART. XI. The Committee on Grievances shall be charged with the investigation of all complaints against members of the Association, members of the Bar and officers of the Courts, and also of all complaints which may be made to them in matters affecting the members of the legal profession, the practice of law and the administration of justice, and shall report thereon to the Association, with such recommendation as they may deem proper. The proceedings of such committee shall be secret.
- ART. XII. If a vacancy occurs in the office of President, the Executive Council shall designate a Vice-President to fill his place. Said Council shall also fill any vacancy that may occur in the office of Secretary or Treasurer; and said Council and said Committee on Grievances may respectively fill any vacancy that may occur therein.
- ART. XIII. The Treasurer shall render an account annually to the Executive Council, and said Council shall report the same to the Association at its annual meeting.

ART. XIV. The Executive Council shall cause to be printed such number of the Constitution and By-Laws of the Association, with the roll of the members of the Association, as it shall deem best, not exceeding one thousand copies, and shall distribute the same to members of the Association, and to such other persons, or associations, or societies as it may deem prudent; and shall, with the proceedings of each annual meeting, print a roll of the members of the Association.

ART. XV. This Constitution shall remain unalterable except by a vote of two-thirds of all members.

BY-LAWS.

SECTION I. The order of exercise at each annual meeting shall be as follows:

- 1. Opening address by the President.
- 2. Consideration of applications for membership.
- 3. Report of Executive Council.
- 4. Report of Committee on Grievances.
- 5. Reports of special committees.
- 6. Delivering or reading of addresses and papers.
- 7. Miscellaneous business.
- 8. Election of officers and delegates to American Bar Association.

SECTION II. There shall be chosen by ballot, at each annual meeting, three members as delegates to the American Bar Association for the ensuing year.

SECTION III. These By-Laws may be amended at any regular meeting by a majority vote of the members present.

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CHARTER MEMBERS.

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Allen, C. E Salt Lake City.	Moyer, G. W. Salt Lake City.
Allison, E. M. Ogden.	Moyle, James H. "
Anderson, J.B. Salt Lake City.	Moyle, O. W. "
Anderson, T, J. "	*Murphy, Walter ''
Armstrong, Geo. G. "	Nye, George L. "
Baldwin, Charles, "	Pearson, Charles E. "
Bennett, C. W. "	Pence, Charles J. "
Booth, H. E.	Richards, Charles C. Ogden.
Boreman, Jacob S. Ogden.	Richards F. S. Salt Lake City.
Bradley, W. M. Salt Lake City	Richards, Joseph T. "
Browne, T. Ellis "	Ritchie, M. L. "
Buys, William Heber.	Royle, J. C "
Cherry, A. N. Salt Lake City.	Schroeder, A. T. "
Cannon, John M. "	Shepard, Richard B. "
Daly, P. J.	Smith, Grant H. "
Dininny, H. J. "	Snyder, W. I. Park City.
Eichnor, Dennis C. "	Stephens, F. B. Salt Lake City.
Ferguson, Barlow "	Street, J. A. "
Gray, J. G.	Sutherland, George "
Henderson, H. H. Ogden.	Sutherland J. G. "
Jack, C. B. Salt Lake City.	Tanner, Nathan, Jr. Ogden.
Jones, Elmer B.	Taylor, A V. Salt Lake City.
Judd, J. W. "	Taylor, John Lu "
Kahn, William "	Thompson, E. D. R. "
Kinney, Clesson S. "	VanCott, Waldemar "
Lee, E. O. "	Varian, C. S. "
Loofbourow, C. F. "	Walters, J. C. Logan.
MacMillian, J. H. Ogden.	Warner, M. M. Provo.
Marshall, J. A. Salt Lake City.	Williams, J. A. Salt Lake City.
Marshall, Thomas	Williams, P. L. "
*Mills, William Gill "	Williams, L. L.
Wills, William Cili	* Deceased.

Members Admitted June 4th. 1894.

King, W. H. Salt Lake City. Evans, David Ogden. Henderson, H. P. " Maginnis, W. L. "

Members Admitted at the Second Annual Meeting, January, 1895.

Brown, Wiley Salt Lake City.		Kaighn, M. M. Salt Lake City.			
Cherrington, Pennel	"	Letcher, J. R.	"		
Critchlow, E. B.	44	Lewis, Eugene	66		
Costigan, Geo. P. Jr.	66	McDowell S. A.	66		
Darke, S. W.	66	Miner, J. A.	4.6		
Denny, Pressly	Beaver.	Norrell, A. G.	66		
Dickson, W. H.		Pierce, Frank	66		
Ellis, A. C. Jr.	66	Rogers, L. R.	Ogden.		
Harkness, H. K.	66	Whittemore, C. O.	Salt Lake		
Howat, A.	6.6	Young, LeGrand	66		
Hurd, J. H.	44	Zane, C. S.	46		
Hutchinson, W. R.	"	Zane, J. M.	"		

Members Admitted at the Third Annual Meeting, January, 1896.

Jones, B. H. Brigham City. Baskin, R. N. Salt Lake City.

Edwards, H. C. Salt Lake City.

Honorary Members Admitted January, 1896.

Chief Justice C. S. Zane,	-	-	-	-	-	Salt Lake City.
Justice G. W. Bartch,	-	-	-	-	-	Salt Lake City.
Justice J. A. Miner,	-	-	-	-	-	Salt Lake City.
Judge John A. Marshall	-	-	-	-	-	Salt Lake City.
Judge Charles H. Hart,	•	-		-	-	Logan.
Judge Henry H. Rolapp,	-	-	-	-	•	Ogden.
Judge Ogden Hiles,	-	-	•	-	-	Salt Lake City.
Judge E. V. Higgins,		-	-	-	-	Cedar City.
Judge William McCarty,	-	-	•	-	-	Munroe.
Judge Jacob Johnson,	•	-	-	-	-	Spring City.

Members Admitted at the Fourth Annual Meeting, January, 1897.

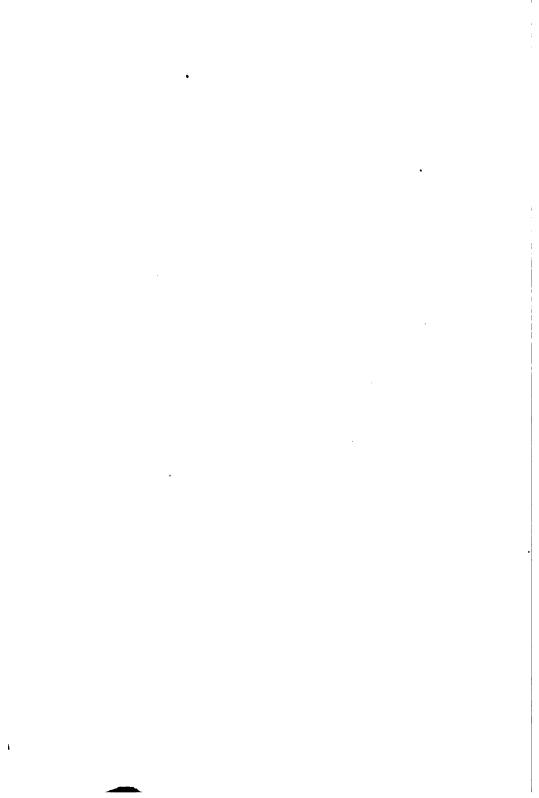
Bishop, A. C.	Salt Lake City.	Jones, Ricy H. Salt Lake City.
Dix, P. A.	• 66	Kenner, S. A. "
Ford, W. F.	4.6	Sonnedecker, W. N. "
Hills, W. J.	46	Witcher, A. B. "
Holzheimer, F.	Н. "	

Honorary Members Admitted January, 1897.

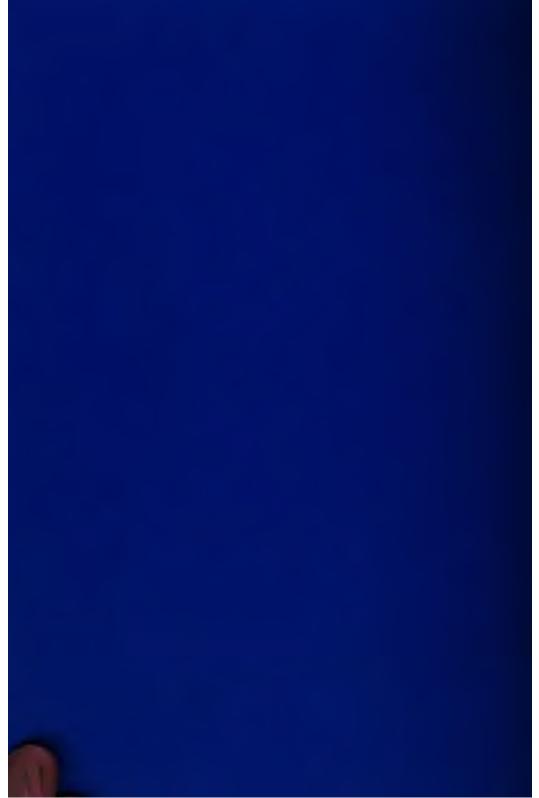
Judge A. N. Cherry,	-	-	-	-	-	Salt Lake City.
Judge W. N. Dusenberry,	•	-	-	-	-	Provo.
Judge A. G. Norrell,	-	-	-	-	-	Salt Lake City.

Members Admitted at the Fifth Annual Meeting, January 1898.

Harrington, D. Salt Lake City.	
McMaster, Alexander "	Young, Richard W. "









Report

of the

Sixth Annual Meeting

of the

State Bar Association

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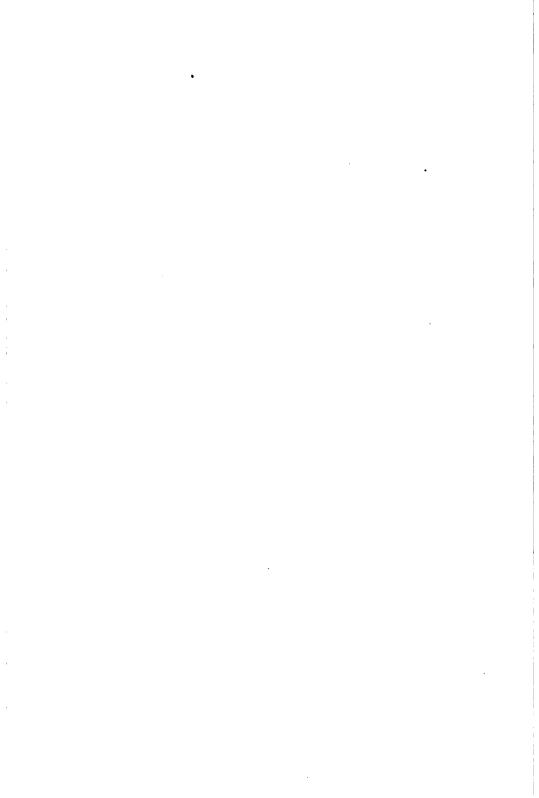
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Held at Salt Bake City. Minh

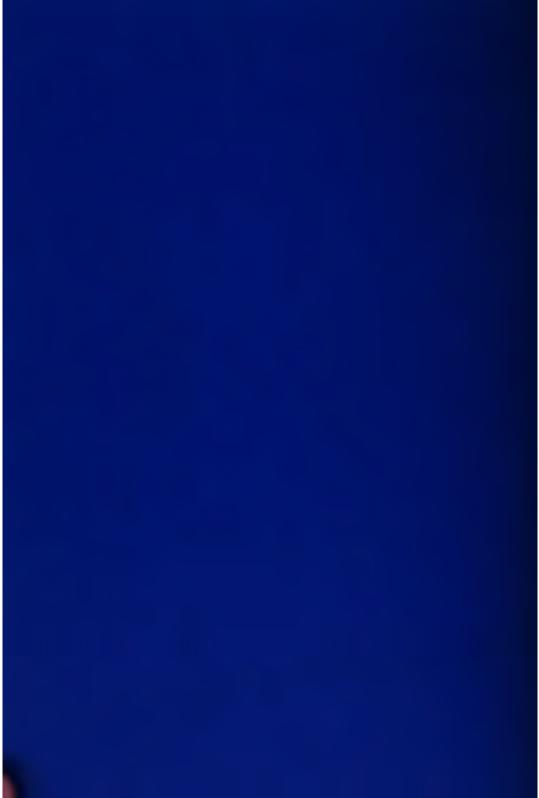




January 13th and 20th, 1902









Report

of the

Sixth Annual Meeting

of the

State Bar Association

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January 13th and 20th, 1902





Report

of the

Sixth Annual Meeting

of the

State Bar Association

Of Utah.

Held at Salt Lake City,

January 13th and 20th, 1902.
(No annual meetings were held for the years 1899, 1900 and 1901.)

SALT LAKE CITY:
GROCER PRINTING COMPANY, PRINTERS.
1903.



Officers for the year 1894.

PRESIDENT	J. G. SUTHERLAND
VICE-PRESIDENT First Judicial District	S. R. THURMAN
VICE-PRESIDENT Second Judicial District	M. M. WARNER
VICE-PRESIDENT Third Judicial District	C. W. BENNETT
VICE-PRESIDENT Fourth Judicial District	JAMES N. KIMBALL
SECRETARYRIC	HARD B. SHEPARD
TREASURER	ELMER B. JONES

Executibe Council.

P. L. WILLIAMS, JOHN A. MARSHALL, F. S. RICHARDS, E. M. ALLISON, GRANT H. SMITH.

Committee on Griebances.

THOMAS MARSHALL, C. S. VARIAN, J. H. MACMILLAN.

Belegates to the American Bar Association for 1894.

J. H. MACMILLAN, H. P. HENDERSON, P. L. WILLIAMS.

Alternates to the American Bar Association for 1894.

C. W. BENNETT, W. L. MAGINNIS, M. M. WARNER.

Officers for the year 1895.

PRESIDENT	J. G. SUTHERLAND
Vice-President	First Judicial DistrictS. R. THURMAN
VICE-PRESIDENT	Second Judicial District, PRESSLY DENNY
Vice-President	Third Judicial District
VICE-PRESIDENT	Fourth Judicial DistrictJ. S. BOREMAN
SECRETARY	
TREASURER	ELMER B. JONES

Executibe Council.

P. L. WILLIAMS, Chairman,

GRANT H. SMITH, Secretary, JOHN A. MARSHALL,

F. S. RICHARDS,

E. M. ALLISON.

Committee on Griebances.

THOMAS MARSHALL. C. S. VARIAN, J. H. MACMILLAN.

Delegates to the American Bar Association for 1895.

P. L. WILLIAMS, J. L. RAWLINS, A. G. NORRELL.

Officers for the year 1896.

PRECIDENT		TACORS	ROPE	MAN
I KESIDENI		JACOBS	, DORE	A1 1.7 7.4
VICE-PRESIDENT	.First Judicial District	.CHARL	ES H. H	ART
VICE-PRESIDENT	. Second Judicial District	HENRY	H. ROL	APP
VICE-PRESIDENT	.Third Judicial District	OG	DEN HI	LES
VICE-PRESIDENT	Fourth Judicial District	E.	A. WIL	SON
VICE-PRESIDENT	.Fifth Judicial District	E.	v. HIGO	SINS
VICE-PRESIDENT	.Sixth Judicial District	WILLIAM	McCA	RTY
VICE-PRESIDENT	. Seventh Judicial District.	JACO	B JOHN	SON
SECRETARY		CLESSON	S. KIN	NEY
TREASURER			E. O.	LEE

Executibe Council.

JAMES H. MOYLE, Chairman,

JOHN M. ZANE, Secretary,

ANDREW HOWAT,

P. L. WILLIAMS,

E. M. ALLISON.

Committee on Griebances.

J. A. WILLIAMS, A. T. SCHROEDER, C. S. VARIAN.

Delegates to the American Bar Association for 1896.

J. G. SUTHERLAND, F. S. RICHARDS, J. A. MARSHALL.

Officers for the year 1897.

PRESIDENT
VICE-PRESIDENT First Judicial District CHARLES H. HART
VICE-PRESIDENT Second Judicial District, HENRY H. ROLAPP
VICE-PRESIDENTThird Judicial DistrictOGDEN HILES
VICE-PRESIDENT Fourth Judicial District W. N. DUSENBERRY
VICE-PRESIDENT Fifth Judicial District E. V. HIGGINS
VICE-PRESIDENTSixth Judicial DistrictWILLIAM McCARTY
VICE-PRESIDENT Seventh Judicial District JACOB JOHNSON
SECRETARY
TREASURER E. O. LEE

Executibe Council.

JAMES H. MOYLE, Chairman, JOHN M. ZANE, Secretary, ANDREW HOWAT, P. L. WILLIAMS, E. M. ALLISON.

Committee on Griebances.

J. A. WILLIAMS, A. T. SCHROEDER, H. E. BOOTH.

Delegates to the American Bar Association for 1897.

JOHN W. JUDD, P. L. WILLIAMS, JOHN M. ZANE.

Officers for the year 1898.

PRESIDENT	CHARLES S. VARIAN
Vice-President First Ji	idicial DistrictCHARLES H. HART
VICE-PRESIDENT Second	Judicial DistrictHENRY H. ROLAPP
VICE-PRESIDENT Third]	udicial District OGDEN HILES
VICE-PRESIDENT Fourth	Judicial District W. N. DUSENBERRY
VICE-PRESIDENT Fifth J	udicial District E. V. HIGGINS
VICE-PRESIDENT Sixth J	udicial District WILLIAM McCARTY
VICE-PRESIDENT Sevent	h Judicial District JACOB JOHNSON
SECRETARY	
TREASURER	GEO. L. NYE

Executibe Council.

JAMES H. MOYLE, Chairman, JOHN M. ZANE, Secretary, ANDREW HOWAT, P. L. WILLIAMS, E. M. ALLISON.

Committee on Griebances.

Officers for the year 1902.

(No annual meetings were held for the years 1899, 1900 and 1901.)

PRESIDENT CHARLES S. VARIAN
VICE-PRESIDENTFirst Judicial DistrictCHARLES H. HART
VICE-PRESIDENT Second Judicial District HENRY H. ROLAPP
VICE-PRESIDENT Third Judicial District FRANK PIERCE
VICE-PRESIDENTFourth Judicial DistrictJOHN E. BOOTHE
VICE-PRESIDENTFifth Judicial DistrictTHOS, MARIONEAUX
VICE-PRESIDENT Sixth Judicial District WILLIAM McCARTY
VICE-PRESIDENT Seventh Judicial District JACOB JOHNSON
SECRETARYCLESSON S. KINNEY
TREASURERGEO. L. NYE

Executibe Conneil.

JAMES H. MOYLE, Chairman,
E. B. CRITCHLOW, Secretary,
ANDREW HOWAT,
P. L. WILLIAMS,

E. M. ALLISON.

Committee on Griebances.

FRANK B. STEPHENS, WILSON I. SNYDER, H. E. BOOTH.

Committee on the State of the Lam.

C. S. VARIAN, Chairman, M. L. RITCHIE, FRANK PIERCE, ELMER B. JONES, WALDERMAR VAN COTT.

MINUTES

Of the Sixth Annual Meeting of the Bar Association of Utah, held in the Federal Court Room at Salt Lake City, Utah, January 13th and 20th, 1902.

The meeting was called to order by the President, Chas. S. Varian, who then delivered his annual address.

The following named applicants for membership having been reported upon favorably by the Executive Council, were then duly elected as members of the Association: Wm. A. Lee, Geo. M. Sullivan, F. A. Sweet, D. H. Wells, Jr., and Allen T. Sanford.

The following named Judges on the bench were duly elected honorary members of the Association: Judge R. N. Baskin, Judge Thos. Marioneaux, Judge S. W. Stewart, Judge W. C. Hall, Judge Chas. W. Morse and Judge John E. Booth.

An address was then delivered by Mr. Wm. A. Lee, upon the subject: "Uncertainty of the Law, its Cause and Remedy."

Upon motion the following resolution was adopted:

Resolved, That all members of this Association, according to the list published in the report of the proceedings for the year 1898, who shall pay their annual dues for the year 1902, on or before March 1st, 1902, shall have their dues remitted for the years 1898, 1899, 1900 and 1901.

The Executive Council, to whom had been referred the report of the Treasurer and Secretary and the unpaid bills incurred by the Bar on John Marshall's Day, then reported as follows:

That the Treasurer's report, showing a balance on hand of \$30.15, be adopted and filed.

That the Secretary's report, showing a balance due the Secretary of \$11.83, be adopted and filed and the amount due the Secretary be paid.

That the balance of the indebtedness incurred by the Bar on John Marshall's Day, amounting to \$47.20, be paid by this Association.

Upon motion the report of the Executive Council relative to the above financial matters was adopted.

Mr. D. H. Wells, Jr., then offered a resolution relative to the election of the judiciary, which after some discussion, was referred to the Executive Council to report at an adjourned meeting to be held on the 20th day of January, 1902.

The following officers for the ensuing year were then duly elected:

President, Charles S. Varian; Vice-Presidents, First Judicial District, Judge Charles H. Hart; Second Judicial District, Judge Henry H. Rolapp; Third Judicial District, Frank Pierce; Fourth Judicial District, Judge John E. Booth; Fifth Judicial District, Judge Thos. Marioneaux; Sixth Judicial District, Judge Wm. McCarty; Seventh Judicial District, Judge Jacob Johnson; Secretary, Clesson S. Kinney; Treasurer, Geo. L. Nye.

Executive Council: James H. Moyle, Chairman; E. B. Critchlow, Secretary; Andrew Howat, P. L. Williams, E. M. Allison.

Committee on Grievances: Frank B. Stephens, Wilson I. Snyder, H. E. Booth.

Upon motion the meeting adjourned to meet on the 20th day of January. 1902, in the Federal Court Room, at 8 o'clock p. m.

CLESSON S. KINNEY,

Secretary.

ADJOURNED SESSION OF REGULAR ANNUAL MEETING.

JANUARY 20, 1902, 8 o'clock p. m.

The adjourned session of the regular annual meeting of the State Bar Association of Utah, was held at the Federal Court Room at 8 o'clock p. m., on January 20, 1902. President C. S. Varian in the chair.

The following named applicants having been reported upon favorably by the Executive Council, were then elected as regular members of the Association:

W. J. Barrette, D. O. Willey, Jr., G. H. Backman, J. J. Whitaker, Geo. H. Smith, Henry Shields, J. Walcott Thompson, Ray Van Cott, Geo. Jay Gibson.

Upon motion a communication, dated August 6, 1900, from the Commission to revise and codify the criminal and penal laws of the United States, was referred to the Executive Council for their report at the next meeting of the Association.

A communication was next read from A. MacDonald, of Washington, D. C., requesting the adoption of the following resolution:

Resolved, That we are in favor of the establishment of a Psycho-Physical Laboratory in the Department of the Interior, at Washington, for the practical application of physiological psychology to sociological, jurisprudential, and abnormal or pathological data, especially as found in institutions for the criminal, pauper, and defective classes, and in hospitals, and also as may be observed in schools and other institutions.

Upon motion the above resolution was referred to the Executive Council for their report at the next meeting of the Association.

The Executive Council having considered the resolution of D. H. Wells, Jr., concerning judicial elections, reported that they had agreed upon a substitute for the same, with amendments to the By-Laws, as follows, to-wit:

"WHEREAS, It is the sense of the members of the Bar Association of Utah, that judicial elections'should be separated, as far as possible, from party politics; and that the members of the Bar, irrespective of party, should use their utmost efforts in securing the election of judges of such learning and integrity, as will elevate the standard of our judiciary to the high and honorable position it should ever occupy. That the members of this Association should support the candidate or candidates for judicial office best fitted to insure such result, and that some method should be adopted by the Association in this matter, to secure the united efforts of the members of the Bar of the State.

"Now, therefore, be it Resolved, That this Association, prior to every election when candidates for judicial offices, other than those of Justice of the Peace, are to be nominated and elected, do, through its committee, investigate the qualifications and fitness of all candidates, and thereupon do make endorsement of candidates for selection by the nominating conventions, and, to this end, that a permanent standing committee be appointed at each annual session of the Association."

Upon motion of M. M. Kaighn, the above resolution was amended by the addition of the following paragraph:

"That this Association express hereby its disapproval of solicitation and political combination by judicial candidates for the purpose of securing support before nominating conventions."

AMENDMENTS TO THE BY-LAWS.

Amend Section 1, so as to read as follows:

SECTION I. The order of business at each annual meeting shall be as follows:

- 1. Opening address by the President.
- 2. Report of Executive Council.
- 3. Consideration of applications for membership.
- 4. Report of Committee on Grievances.
- 5. Report of standing and special committees.
- 6. Delivering or reading of addresses and papers.
- 7. Miscellaneous business.
- 8. Election of officers.

Amend Section II, to read as follows:

SECTION II. There shall be appointed by the President and Executive Council each year, three members as delegates to the American Bar Association for that year.

Amend Section III, to read as follows:

SECTION III. There shall be a standing committee, to consist of the President and four members, appointed by him at each annual meeting, on the "State of the Law," whose duties shall be to report at the annual meetings important amendments, revisions or additions to the law of the State, as developed in legislation or by judicial decision together with such suggestions as may seem to be necessary.

Add Section IV, to read as follows:

SECTION IV. There shall be a standing committee of ten appointed annually by the President and Executive Council on "Judicial Candidates and Nominations," whose duty shall be to investigate and report at the annual or

special meetings of the Association, upon the qualifications and fitness of the candidates for judicial offices, other than those of Justice of the Peace.

Amend title Section III, so as to read "Section V:"

SECTION V. These By-Laws may be amended at any regular meeting by a majority vote of the members present.

Upon motion the above resolution as amended, and the By-Laws as above set forth, after a lengthy discussion, were adopted.

The President announced that under the new By-Law III, he had appointed the following persons upon the Committee upon the State of the Law: C. S. Varian, Chairman; M. L. Ritchie, Frank Pierce, Elmer B. Jones and Waldemar Van Cott.

Upon motion the meeting adjourned subject to the call of the President.

CLESSON S. KINNEY,

Secretary,

PRESIDENT'S ADDRESS.

BY CHAS. S. VARIAN, PRESIDENT.

Gentlemen of the Bar Association:

I welcome you to this annual meeting. The object of this Association, as declared by its constitution, is, "The elevation of the standard of professional learning and integrity; to inspire the greatest degree of respect for the efforts and the influence of the bar in the administration of justice; and to cultivate fraternal relations among its members."

The elevated purpose here disclosed demands our most thoughtful consideration to the end that results commensurate to the undertaking may be attained. Certain it is, that this Association can, if it will, exercise a most powerful influence for good along the lines suggested by its constitution. Since our last meeting, Brothers James H. MacMillan and Presley Denny have died, and Brothers Anderson, Gray, Judd, Kahn, Pence, Schroeder, Street, Taylor, Costigan, Norrell and Zane have removed from the State.

On the 4th day of February, 1901, the bench and bar of the United States commemorated, with fitting ceremonies, the centennial anniversary of the elevation of John Marshall to the Supreme Bench of the United States. At a special meeting of the Bar Association of the State, held at the Federal Court Room in this city on the night of December 10, 1900, pursuant to a call issued by me, a committee of nine was directed to be appointed by your President, with full power to provide for the proper observance of the day. Such committee was appointed and a program for the day and evening at

the capital city arranged. The aid of the bar and bench throughout the State in the observance of the day was solicited, and cheerful responses received. Wherever the Courts were in session proper recognition of the day was given. In the capital city addresses were made at the bars of the National and State Courts, to which responses were made by the judges, and the records made. In the evening, at a banquet largely attended by members of the bar and judges, many eloquent and instructive addresses were delivered.

Throughout the country the day was observed with earnest enthusiasm, truly indicating the veneration of the American lawyer and citizen for John Marshall and his great work. The celebration of the day was not confined to the bar and bench alone—everywhere, universities of learning, municipalities and business men, united with the bar in a public expression. The children of the public schools added their tribute to the memory of the life and character of the great judge. The President of the United States, with his Cabinet and the Justices of the Supreme Court, assembled with the Senate and House of Representatives at the Capitol, to listen to great orations, which added lustre and renown to the occasion.

To the committee who had the matter of the celebration in charge, must be given all the credit for its success. Efficiently and well every member labored in the cause, and we are all under obligations to them for their services. In this connection, I direct attention to the fact that there is a deficit in the expense fund at the disposition of the committee for which the members are personally liable. I submit the report of the chairman of the sub-committee, with accompanying bills, and recommend the prompt liquidation of the same.

At the annual meeting of the American Bar Association, A. D. 1900, the following resolution was adopted:

[&]quot;Resolved, That the State Bar Associations of the United

States be requested to report on or before the first day of August of each year to the Secretary of the American Bar Association a brief outline or summary of the year's work, including the titles of addresses read before them and a synopsis of all affirmative action taken on reform legislation recommended by the Association."

I recommend that you take the necessary action in response to this resolution, giving your secretary such instructions as may be required.

At the annual meeting of the Association at Denver, Colorado, held on the 21st, 22nd and 23rd of August, 1901, the Utah State Bar Association was fully represented by Messrs. E. B. Critchlow, C. S. Kinney and D. H. Wells, Jr. Mr. M. M. Warner, who was elected as a delegate, was unable to attend the session, and Mr. Critchlow was appointed in his place. The next session of the American Bar Association will be held at Saratoga, New York, and, in the following year, when the Exposition will be opened, the Association will convene at St. Louis. It is believed that great good has been and is being accomplished by the American Bar Association, and it is, in my judgment, of the greatest importance that we should annually send representatives to its meetings.

The by-laws of this Association provide that delegates to the American Bar Association shall be elected at each annual meeting, which is now fixed for the second Monday in January. This is the busiest season for lawyers, and it is impossible to secure the desired attendance at these annual meetings. It has been suggested that if the meetings were held later, in the spring or early part of the summer, the interests and convenience of its members would be best subserved, and I submit the suggestion for your consideration. Any change in this particular will necessitate an amendment to the constitution, which can only be accomplished by a vote of two-thirds of the members.

I am in receipt of a communication from Mr. Arthur

MacDonald, of Washington, D. C., who is a specialist in the United States Bureau of Education, requesting me to bring before this Association the following resolution:

"Resolved, That we are in favor of the establishment of a Psycho-Physical Laboratory in the Department of the Interior at Washington for the practical application of physiological psychology to sociological, jurisprudential and abnormal or pathological data, especially as found in institutions for the criminal, pauper and defective classes and in hospitals, and also as may be observed in schools and other institutions."

Accompanying the communication is some typewritten and printed matter, conveying information in the premises, and which the Secretary now has for your information. The subject is worthy of your careful consideration, and I recommend that it be given attention during the present session.

Since the last annual meeting, which was held in 1898, the legislature has made certain changes in the laws, which, with some new enactments, it may of interest to note. The law providing for the manner of locating and recording mining claims has been re-enacted, and, so far as I am advised, has proven to be well adapted for its purpose. The provision requiring \$50.00 worth of work to be done on a claim within ninety days after location has been eliminated. The law still authorizes the making of rules and regulations by the miners of the several mining districts, subject to the laws of the United States.

In my annual address of 1898, I took occasion to suggest that the State law should embrace the whole subject, leaving nothing to the determination of local rules and regulations, because a general law uniform in its operation throughout the State, would best conserve the interests of the mining public. The subject is receiving attention in other states and territories, and should be carefully considered by this Association.

The statutes providing for protection against fire, and

for safety cages and apparatus in mines, indicate a realizing sense of a just responsibility in the premises on the part of The dreadful disaster at Scofield in the Pleasthe legislature. ant Valley Coal mines on May 1st, 1900, impressed the legislature with the necessity of providing for the safety and health of coal miners, and the result has been the enactment of a comprehensive statute providing for the inspection by a State Inspector of all coal and hydro-carbon mines in the State, at least once every three months, and oftener if the condition of the mines require it. Provision for openings and safety apparatus is made, and a series of rules to be observed by mine owners, managers and employes, is prescribed. I have not heard of any complaints as to the operation of this law, which seems to have been enacted in response to an imperative demand for the protection of life and health.

The act of the legislature establishing a State School of Mines as a department of the State University, is to be commended, and it is to be hoped that the school will receive sufficient financial aid, in order that its purposes may be carried out. Mining is the great industry of this and adjoining states, and its wonderful development during the past decade along scientific lines, has demonstrated the necessity for a systematic educational development of the operator, expert and miner.

For the safeguarding of our municipal streets and highways, a very salutary law provides that no person shall acquire title by adverse possession to "the streets, lanes, avenues, alleys, parks and public squares," or other lands held for public purposes, by towns or cities.

Sections 2046 to 2053, both inclusive, of the Revised Statutes, vesting power to parol prisoners in a Board of Correction created by statute, have been repealed, and such powers vested in the Board of Pardons. This change in the law was made necessary by the decision of the Supreme

Court holding that the subject matter of pardons was committed by the Constitution to the Board of Pardons. Under the existing law, the Board of Pardons may parol convicts upon conditions to be prescribed by it, revoking such parol at pleasure. Its purpose is to extend to the unfortunate criminal substantial aid in his struggle to reform, and to hold out the hope of ultimate restoration to his place in the citizenship of life. It is abreast of the advanced penological thought of the times, and should receive the cordial sympathy and support of all citizens. Such being the public policy of the State, as indicated by this statute, every individual is in duty bound to afford aid and sympathy to these unfortunates striving to recover their lost opportunities.

In enacting the "Negotiable Instruments Law," it is believed our legislature has answered a necessity which has become more apparent every year. This is the result of national conferences of state boards of commissioners for promoting uniformity of legislation in the United States, held annually by representatives of thirty-three states. been, with some slight changes here and there, adopted by the states of New York, Massachusetts, Connecticut, Rhode Island, Maryland, Tennessee, Virginia, North Carolina, Florida, Wisconsin, Colorado, Washington, Oregon, North Dakota and Utah, and, in the District of Columbia, It does not purport to cover all the law governing negotiable instruments, but provides that cases not included within the act shall be governed by the rules of the law merchant. plain tendency of professional thought throughout the country toward uniformity of legislation by the states and territories upon questions of general law, may be expected in the near future to result in further development along such lines. The argument for a uniformity of laws regulating marriage and divorce and for the prevention of solicitation and advertising for divorce business by professional fakirs, is very persuasive, and an effort is being made to have the several states enact uniform statutes in relation thereto. A statute regulating proceedings in divorce cases is proposed as follows:

- "(1) No divorce shall be granted for any cause arising prior to the residence of the petitioner or defendant in this state, which was not ground for divorce in the state where the cause arose.
- "(2) No person shall be entitled to a divorce for any cause in this state, who has not had actual residence therein for at least one year next before suit brought, with bona fide intention of making the state his or her permanent home.
- "(3) No person shall be entitled to a divorce for any cause arising out of this state, unless such person shall have resided therein for at least two years next before bringing suit, with *bona fide* intent, as aforesaid, to make this state his or her permanent home.
- "(4) No person shall be entitled to a divorce, unless the defendant shall have been personally served with process, if within this state, or with personal notice duly authenticated, if out of this state, or, unless the defendant shall have entered an appearance in the case; but, if it shall appear to the satisfaction of the court that the petitioner does not know the address nor the residence of the defendant and has not been able to ascertain either, after reasonable and due inquiry and search continued for one year, the court or judge in vacation, may authorize notice by publication of the pendency of the petition for divorce to be given in manner provided by law.
- "(5) No divorce shall be granted solely upon default, nor solely upon admissions by the pleadings, nor except upon trial before the court in open session.
- "(6) After divorce, either party may marry again, but in no case where notices have been given by publication only, and the defendant has not appeared, shall a decree for divorce become final or operative until six months after trial and decision.

"(7) Wherever the word 'divorce' occurs in this act, it shall be deemed to mean from the bond of marriage."

Such a law, it seems to me, should be enacted in every state of the Union.

The constitution provides that, "Eight hours shall constitute a day's work on all works or undertakings carried on or aided by the state, county or municipal governments." (Art. 16, Sect. 6.)

In pursuance of this declaration, the legislature has enacted that eight hours shall constitute a day's work on all works or undertakings carried on or aided by the state, county or municipal governments. By the statute it is also provided, that any person, corporation, firm, contractor, agent, manager, foreman, or any officer of the state, or of any county or municipal government thereof, who shall "request or contract with any person to work upon such works or undertakings longer than eight hours in one calendar day, except in cases of emergency, etc.," shall be deemed guilty of a misdemeanor.

This enactment seems to present the old question of a violation of the constitutional right of liberty to contract, upon which there is an apparent conflict of authority. than this, there seems to be a clear discrimination in favor of one party to the forbidden contract: the law making it a crime only for the employer to contract with the employes for work longer than eight hours in one calendar day. The public works of the cities are required by law to be constructed by contract, and this statute apparently proceeds upon the assumption that the contractor and his managers and foremen are agents or officers of the State, and consequently subject to the limitations imposed by the State upon its officers. However this may be, the statute presents a question under the Fourteenth Amendment, which ultimately must be determined by the United States Supreme Court.

The legislation requiring the vestibuling of cars of the street railways, providing for an inheritance tax, and creating a Board of Labor, Conciliation and Arbitration with defined powers, may be noted as indicating the progress of the State. Not much may be said in commendation of a statute making it a misdemeanor "for any person to wear the insignia or rosette of the military Order of the Loval Legion of the United States, or the Order of the Grand Army of the Republic, or the medals presented by this State to the Utah Volunteers, or to use the same to obtain aid or assistance thereby from any person, unless he shall be entitled to use the same under the constitution, by-laws, rules and regulations of such Orders, or by the laws of the State." So far as the prohibition is against use of the credentials to which a person is not entitled for the purpose of obtaining property is concerned, it would seem to be directed against the procuring of property by means of false pretenses, a crime defined and prohibited by the crimi-As to the wearing of decorations or medals, indicating membership of military societies, the subject is one that ought to be beyond the domain of legislation, and which can safely be left to be settled by public opinion. ute was probably enacted to meet an apparent necessity created by an individual case. It certainly is indicative of a paternal spirit in government, which may serve society best by being suppressed.

Another statute attracts attention because probably enacted in response to the cry from some law suit, jeopardized or lost by the failure of one of the parties to prove the corporate existence of a party. It provides that, "In an action by or against a corporation, the plaintiff need not prove upon the trial the existence of the corporation, unless the answer is verified and contains an affirmative allegation that the plaintiff or defendant, as the case may be, is not a corporation." Thus, step by step, the practice of the law is sought to be made easy

by legislation, and by and by, a beginner's or lazy-man's code will be relied upon to cure all defects or omissions.

Among the most important legislation of the last two years, is what is popularly known as the "City Court" acts. These laws are applicable only to the cities of Salt Lake and Ogden, and create a city court for each place. In Salt Lake City, there are two judges of this court, who, having been elected at the last election, took their seats on the first Monday of the present year, to hold office for the term of three vears, thence next ensuing, when their successors will enter upon terms of four years each. This court is designed to take the place of the several justices' courts of the city, all of which, but one, by this and accompanying legislation, are The Justices of the Peace now in office may hold their offices until the expiration of their official terms; in the meantime, however, their jurisdiction is greatly restricted. These provisions apply to Ogden City also, except that there but one City Judge is provided for. The City Court is a court of record, with a clerk and seal, and the judges thereof have fixed salaries. The constitutional authority for this legislation is supposed to be found in the provision of Section 1, Article 8, that: "The judicial power of the State shall be in a Supreme Court, in District Courts, in Justices of the Peace and such other courts, inferior to the Supreme Court, as may be established by law." The design of these laws is to insure a better administration of justice in the larger cities, by withdrawing judicial power from incompetent hands and vesting it with competent and learned To this end, fixed terms of office, with adequate salaries, are provided. The scheme of these statutes would seem to be a wise one, and to give promise of beneficial results to the people. But, there is a question made as to their constitutionality, and a suit has already been brought at Ogden City to determine it.

In my opinion, the time has arrived for a change in the law governing admission of attorneys to the bar. Our statute (R. S., Sections 106-07-08.) authorizes an examination of applicants by the Supreme Court, or by a committee appointed by the Justices thereof. In fact, the court never makes such an examination itself, but the entire matter is committed to an examining committee appointed by the court, whose report is always confirmed. The duty of examining candidates for the bar should be imposed upon the Supreme Court. examinations should be public, and upon questions propounded in writing and framed with care and method within the lines of a prescribed course of study, and held under such restrictions as would prevent faking or favoritism. should either require the graduation of the candidate at a regular law school having a prescribed course of at least four years, or a certain course of study of not less than four years, which course should include defined branches of the law and prescribed text books. The examination of applicants should be searching and thorough, and made in open court by the judges themselves, or under their watchful supervision. Since the law commits the matter to the wisdom and discretion of the judges, the bar has the right to demand of them a strict and conscientious performance of their duties. law also authorizes the admission without examination of any attorney and counselor who has been admitted in the highest court of any other State or Territory, upon production of his license from said court, or, upon his affidavit of such admission. An examination of the laws of some of the adjoining States, discloses the fact that Utah is much more liberal in this respect than those of Nevada, Idaho, California, Oregon and Wyoming. In all of these jurisdictions, admissions to the bar are limited to citizens of the State. No member of the bar of Utah, while a resident thereof, can be admitted to the bar of either of these States, except that of Oregon.

gon, there is a statute authorizing the admission to the bar of citizens of other States whose laws will permit admission of members of the bar of Oregon while citizens of that State. would seem that the rule of reciprocity demands an amendment to our law, so as to put the profession and the courts here upon an equal footing with that of the other States, and this not for the purpose of protecting our lawyers against the invasion of outside attorneys, but in the main for the purpose of guarding the courts in their administration of justice and safe-guarding our own people against the acts or omissions of those not subject to our jurisdiction. The underlying principle of such legislation is found in the obligation of the courts to maintain and exercise a wholesome regulation and control of attorneys and counselors appearing before them. Such regulation and control cannot be properly exercised over those who only casually and for temporary purposes, come within the State. It is not contended that no member of the bar of another State should be prohibited from trying his lawsuit in our courts. For such a purpose, as the cases arise, he may be and would be always admitted to appear for the time being.

I recommend your careful consideration of this subject, with a view to presenting the matter to the legislature.

At the last general election, five amendments to the constitution, as proposed by the legislature of 1899, were adopted: Section 1, of Article 6, was amended so as to read as follows:

"The legislative power of the State shall be vested: (1) In a Senate and House of Representatives, which shall be designated the legislature of the State of Utah. (2) In the people of the State of Utah, as hereinafter stated: The legal voters or such fractional part thereof of the State of Utah, as may be provided by law, under such conditions and in such manner and within such time as may be provided by law, may initiate any desired legislation and cause the same to be

submitted to a vote of the people for approval or rejection, or may require any law passed by the legislature (except those laws passed by a two-thirds vote of the members elected to each house of the legislature) to be submitted to the voters of the State before such law shall take effect. The legal voters, or such fractional part thereof, as may be provided by law, of any legal subdivision of the State, under such conditions and in such manner and within such time as may be provided by law, may initiate any desired legislation and cause the same to be submitted to a vote of the people of said legal subdivision for approval or rejection, or may require any law or ordinance passed by the law-making body of said legal subdivision to be submitted to the voters thereof before such law or ordinance shall take effect."

Section 22 of the same Article was likewise amended by adding a provision that laws enacted by the vote of the electors, under the initiative and referendum clause of Section 1, shall begin with an enacting clause, "Be it enacted by the people of the State of Utah."

The legislature of A. D. 1901 failed to provide, by law, for the execution of these amendments, and, consequently, an opportunity of attesting the utility of the initiative and referendum will not be presented to our people for some time, if at all.

Section 6, of Article 10, was amended by omitting the words: "maintained and," in the second line. The original section provided, that: "In cities of the first and second class, the public school system shall be maintained and controlled, by the Board of Education of such cities, separate and apart from the counties in which said cities are located."

In Merrill v. Spencer, the Supreme Court, in construing this section, interpreted the word, "maintained," to mean, "to bear the expense of;" and held that the boards of education in the designated cities were entitled to maintain and control the public school system in the municipalities, separate and apart from the counties in which the cities were located; and it decided that a statute directing the county authorities to set aside from the county school fund, before its distribution according to the number of school children, the money required for various county school purposes, was in violation of the above section of the constitution. The amendment adopted was designed to re—impose the burdens upon city property in favor of the outlying county which had been removed by this decision, and doubtless has accomplished its purpose.

Section 3, of Article 13, was amended to authorize the remission of the taxes of the indigent poor.

In this connection, I call attention to the fact that there seems to be no means provided by law for publishing and distributing in permanent form amendments to the constitution. They are not published in the session laws, but are kept by the Secretary of State in the form of printed slips, which can be obtained upon application. I think all amendments to the constitution, as well as amendments proposed by the legislature which are not adopted, should be published in each book of the statutes. There should be a standing committee of the Association, to investigate and report upon the state of the law with the necessary recommendations. Thus, a field for intelligent discussion and action would be opened at each annual meeting.

There is one decision of our Supreme Court which particularly invites attention. In Thoreson v. State Board of Examiners, (19 Utah 18), the Supreme Court decided that public officers in mandamus proceedings against them, could not plead in justification of a non-performance of a ministerial duty imposed by statute, that the statute was in violation of the constitution of the state. The court lay down an apparently hard and fast rule which admits of no exception, and cites cases supposed to support its conclusions, from the states of Illinois, Maine, Utah, Nebraska, Idaho, Massachusetts, West Virginia, New York and California.

Assuming that this case was fully and fairly reported in the official reports, it appears that this question was not considered or discussed in the briefs, and it is unfortunate that the court was obliged to raise and decide the question without the aid of counsel, and, as it seems, upon a somewhat limited and hasty examination of the authorities. The rule as laid down by the court is comprehensive in its scope, and includes all public officers. If it is to stand as the law of the state, the financial officers of the state and county and municipal governments, charged by law with the collection, keeping and disbursement of the public money, are prohibited from in anywise questioning the validity of any act of the legislature directing the auditing of accounts, and the disbursement of moneys in payment thereof; for the court distinctly holds, that in the performance of ministerial duties enjoined by statute, public officers must obey the statute. Moreover, if the court shall adhere to its opinion, the Supreme Court itself will not, and the other courts in the state cannot, determine a plea made by such an officer in such a case upon a return to a writ of mandate, and pass upon the constitutionality of the question, for it is distinctly ruled that the courts will not pass upon the validity of a statute in such a proceeding. the court had looked further into the very cases cited to sustain its judgment, it would have ascertained that in some of them it was expressly, and in others impliedly, admitted that there were exceptions to the rule announced in particular cases, most of which arose under the revenue and election laws.

It may be conceded, as contended in the opinion, that the court will not pass upon the constitutionality of a statute in a mandamus proceeding at the instance alone of a private person, where the rights of others or of the State are necessarily involved. But this is simply in accordance with another general rule of law, which vests the court with a wise dis-

cretion in the matter of awarding the writ. Unless the right of the relator is clear, and the relief can be granted without prejudice to the rights of others not before the court, the writ will be denied. But, to go farther and say, as the court does say here, that the officers of government will not be permitted to look to the constitution for restraints upon their official actions, and are in all cases blindly to follow the legislative command, is, to say the least, startling. It will not do to say that such officers have no interest in the question. In a late case, the Supreme Court of California said:

"We see no force in the point that the respondent (county auditor) has no interest in the question here involved. The act under which petitioner claims being unconstitutional and void, there is no law authorizing respondent to draw the warrant; and to do the act demanded of him would be to violate his official duty and oath, and subject himself to liabilities and penalties."

Denman v. Broderick, 111 Cal. 96.

And the Supreme Court of Nebraska, in a later case than the one cited in the Thoreson case, adjudged that officers may assert the unconstitutionality of a statute as a defense in mandamus proceedings, saying:

"We had thought it settled, at least since the decision of Marbury v. Madison, I Cranch, that the constitution is the supreme law, binding upon the legislature as well as upon every citizen, and that no act of the legislature repugnant to the constitution can become a law for any purpose. A different doctrine has of late been revived, and it would even seem has received acceptance, in a much modified form, by some courts. There can, however, in our mind, be no escape from these propositions: That the constitution is the fundamental law; that an act of the legislature repugnant thereto is not merely voidable by the courts, but is absolutely void, and of no effect whatever. It is no law, and binds no one to observe it. The officers of this State are sworn to support the constitution. Where a supposed act of the legislature and the constitution conflict, the constitution must be obeyed, and the

statute disregarded. Ministerial officers are, therefore, not bound to obey an unconstitutional statute, and the courts, sworn to support the constitution, will not, by mandamus, compel them to do so. It is, therefore, a complete answer to an application for such a writ, that the statute seeking to impose a duty is violative of the constitution."

And the court proceeds to say, that the case of State v. Douglass County (cited by our own court in the Thoreson case), was not authority in opposition to its present decision, and that the question had not been there determined.

Van Horn v. State, 64 N. W. 366.

The courts of Illinois, West Virginia and New York, also declare against the rule of law as laid down in the Thoreson case. Thus it appears that the courts of five of the States, whose decisions are cited in the Thoreson case in support of the rule there announced, have distinctly held to the contrary. Indeed, the courts of twenty-two of the States, with those of the federal government, have, by solemn decision, recognized not only the right but the obligation of all public officers to obey the mandates of the constitution.

But the court has not rigidly adhered to the rule of the Thoreson case.

In State, ex rel., J. A. Wright, vs. Joseph Stanford, et als., which was a proceeding in mandamus to compel the defendants, as County Commissioners of Weber County, to appoint a tree inspector from one of three nominated by a member of the State Board of Horticulture for that District, pursuant to Section 1176 of the Revised Statutes, as amended in Chapter 47 of the Laws of 1899, the Commissioners defended on the ground of the unconstitutionality of the statute, and the court sustained their contention, declining to consider the question whether County Commissioners were ministerial officers, because the parties to the proceeding so requested. The Justice who delivered the opinion in the Thoreson case dissents.

In the later case of the State, ex rel., Heber M. Wells,

Governor, v. Charles S. Tingey, State Auditor, also in mandamus, the court passed upon the constitutional question presented by the respondent, and awarded a peremptory writ without making any reference in the opinion to the Thoreson case. We are not advised as to the reason, if any, for distinguishing this case. It is true the issue was solely between the state and its officers, and all parties were before the Court. But, in the Thoreson case, the state was also before the Court defending its school fund against an alleged unconstitutional statute.

The last legislature enacted a statute, whereby the salaries of the Governor, Secretary of State, Auditor, Attorney General and Superintendent of Public Instruction were increased, and made its provisions applicable to the present The Auditor refused to draw and deliver his warrants for the increased salaries, and thereupon, the Governor applied to the court for a writ of mandate. Upon the hearing, had upon the return to the writ, it was contended on behalf of the respondent that the statute, in so far as it was made applicable to the present incumbents, was in violation of Section 20, Article 7, of the constitution. The court, however, without dissent, upheld the statute in its entirety, and awarded the peremptory writ. Evidently, the court considered this case as within an exception to the rule laid down in the Thoreson case. An admission that there is any exception to the rule there announced, in some degree modifies the effect of that decision. If a public officer charged with the collection and safe keeping of public money, who is sworn to uphold and defend the constitution of the state, may not disobey an unconstitutional demand made by the legislature upon public money in his charge, who is responsible to the government for the moneys he shall pay out in pursuance of an unconstitutional act? In such a case, could be and the smeties on his official bond defend against an action to recover

the moneys so paid with a plea, that he, as a ministerial officer, had no right to question the legislative act? It is generally supposed to be the law, that every officer of the government is bound to obey the constitution as the supreme law of the state. And where a ministerial officer has a well-founded doubt as to the constitutionality of an act of the legislature requiring him to perform a ministerial duty, it ought to be the law that he is justified in resisting performance until the matter is settled by the courts.

There is no reason why such a question may not be determined as well and satisfactorily in mandamus proceedings, as in any other form of action. The right of the relator, whether it depends upon the construction or constitutionality of the statute, should certainly be passed upon, and in most cases mandamus is the proper if not the only remedy. Apparently, the Thoreson case was ruled against principle and the great weight of authority.

The question of the sufficiency of the judicial salaries has received much attention during the past two years. At its last session the legislature had under consideration bills providing for the increase of the salaries of the Justices of the Supreme Court and the Judges of the District Courts. The bill raising the salaries of the Justices of the Supreme Court to \$4,000.00 per annum passed the House of Representatives, but was lost in the Senate.

No just reason can be found for longer delaying action in this matter. The insufficiency of the compensation given to our judges is so apparent, that there should be no further delay in providing for an increase. The state is rapidly growing in wealth and material resources, and is abundantly able to deal fairly with its judicial officers. A judge has just as much a right to live well and to put by money for the future as any other citizen, and his compensation should be adequate for the purpose. His entire time and energy should

be given to the performance of the duties of his high station. He has no right to engage in business, since, by doing so, in more or less degree, he disqualifies himself in the administration of the great trust reposed in him. No suitor before a judge who has engaged in business transactions, can ever be fully assured that the interest or pre-conceived opinion of the judge may not unconsciously bias his judgment. Indeed, such are the infirmities of men, that no judge in such situation can be certain of himself. It is the duty of the state toprovide a proper compensation for its judges, so they may be relieved of any necessity of engaging in commerce or business of any kind, and public opinion should restrict them to the legitimate duties of their offices. In this connection another matter demands attention. As the law now is, no distinction is made between the Judges of the Supreme and District Courts in the matter of salaries; all receive the same compensation. All of the judges should receive higher salaries, but the salaries of the Justices of the Supreme Court should be measurably larger than those of the District Judges.

There is also a just complaint concerning the payment of the expenses of the District Judges while on the circuit. These are defrayed in the form of mileage prescribed by the constitution and a statute in pursuance thereof. The constitution provides: "Until otherwise provided by law, the salaries of Supreme and District Judges shall be \$3,000.00, and mileage, payable quarterly, out of the State treasury." (Art. 8, Sect. 20.)

The mileage, as fixed by law, is too low to enable the judges to defray their actual expenses in many cases. If the judge has a long distance to go and but a short time to stay at the place of holding court away from his home, he may possibly be enabled to discharge his actual expenses with the mileage allowed him by the State; but, if he has a short distance to travel and a long time to stay, he is actually out of

pocket. It would be but just to pay the actual expenses of the judges while away from home on the circuit, or employed in holding court for each other. Whether, in view of the constitutional provision above quoted, the legislature has the power to do this, may be a question. Possibly, a statute largely increasing the mileage to be allowed, with an added proviso that in no case should the sum exceed in the aggregate the actual expenses of the judge, would be unobjection-Whether the salaries of the judges can be changed by statute so as to apply to the persons in office at the time of the enactment, is a grave question made by the constitution. Whatever may be its answer, the next legislature should increase the salaries of the judges, and, if the constitution shall prevent its application to the then incumbents, in any event, the law can and will apply to their successors.

A question relating to the methods by which candidates for judicial office were nominated in the political conventions, was prominently presented in this city last fall. Two caudidates for the office of City Judge were to be nominated by each party, and the result in each convention appeared to have been brought about through combinations and personal solicitation of the nominees. At a meeting of the bar, called by your President, pursuant to a request made by a number of lawyers, candidates were selected and an independent judicial ticket placed before the people. This action was had but a very short time before the election, and, as was to be expected, the candidates so named were not successful. The movement, however, served as a protest against the methods sometimes employed in political conventions to secure desired results, and to condemn personal solicitation and combination on the part of candidates to secure nominations for judicial office. There ought not to be two opinions upon this question, and when the issue shall be properly and fairly presented to the people, I have no doubt it will be rightly

decided. Can there be a stronger indication of unfitness to be a judge, than is shown by a candidate who log-rolls and begs his way to a nomination? Is there any more sure way to lessen the dignity of the judge, with a resulting loss of respect for his office, than to place upon the bench a man who has fought his way through the primaries and conventions to claim the prize as a reward for his superior adroitness and skill in the art of politics? When a man asserts for himself that he has the learning, experience, and character necessary for the station, his fitness may at once be distrusted. nature of things, one who really possesses the qualifications indispensably necessary for the judicial office, will naturally also possess the modesty and elevation of mind and character which makes self-assertion impossible. I would not condemn the principle underlying our popular government which remits to the people the nomination as well as the election of public officers. I admit the necessity of conducting the government by and through political parties, and of the selecting of candidates by conventions. But, I would dominate the conventions with a forceful and enlightened public sentiment, which would make impossible profane intrusion into the sacred temple of justice. Our judges must be men of learning and experience, who reach their offices through natural processes of selection by their fellow-citizens, solely because of their fitness. So far as the question of professional learning and aptitude is concerned, it would seem that the lawver is better enabled to decide than the lavman. his fellows daily in the conflicts of professional life, he is quick to mark and note the evidences of studious habit. research and learning, as reflected by a truly legal mind in repose as well as in action. No one so well as he can determine such a question; indeed, no one has the opportunity. Even in matters of personal integrity and character the electorate at large may not always be able to reach a proper con-

clusion without professional aid. It is manifestly true, that in the selection of judges, the assistance of the bar is required, and it should be afforded at proper times and in proper ways, conscientiously and with definite purpose. I do not claim for a moment that our judges should be selected by the lawyers alone, but I do assert that the bar of this State should wield a potent influence in the conventions in the matter of judicial If it has no candidates in an individual or pernominations. sonal sense, and will select from the persons who are willing to accept the office those who are best fitted for its duties. without fear or favoritism, it cannot be doubted that its voice will be heard and consideration given to its recommendations. In some of the great cities of the country, bar associations have taken up this question with energy and firmness. to every election when judges are to be chosen, a committee undertakes an investigation of the antecedents, personal character and professional fitness of every aspirant for the bench. This investigation is uncompromising and thorough, and, upon the report of the committee, the bar association acts, affirming or denying to each candidate the requisite qualifications. Thereupon, nominating conventions, as a rule make their selection from among a number of candidates who have passed the scrutiny of the bar. It is at once seen that such action by a bar association is not justly subject to the criticism that the bar is attempting to dictate nominations to the peo-The bar does not say to the nominating convention you shall nominate such a man, but it does say, you OUGHT NOT to nominate such a man. There are times when negation is more potential than affirmation.

I believe that much can be accomplished along these lines, if we as lawyers, will but lend our aid. Ought we to complain if incompetent men are placed upon the bench to decide our cases when we neglect the opportunities afforded us, and fail at the right time and in the right way to exert

the powerful influence that our united action would give. individuals, we may be unable to resist the onward rush of the political boss and heeler, swarming the primaries and conventions in a disgraceful strife for power and place; but, as an association, we can, if we will, concentrate public sentiment in support of a public service and for the public weal. Do you complain that your court of last resort performs its duties in such a way as not to develop the greatest capacity of its members, and consequently fails to achieve the best results by its judgments? Such a subject is pre-eminently one for consideration by this bar association, which can find legitimate and proper means of enforcing the necessary Is it true that the profession of the law is scandalreform. ized and brought into contempt by the unprofessional methods and conduct of some practitioners? Are there any inferior judicial officers who engage in reprehensible practices in order to secure business? The remedy in such cases may be found by this Association if it will undertake the service. all sincerity, I ask you to give your undivided and careful attention to these great questions.

Gentlemen of the Bar Association, I appeal to you collectively and individually, to at once enter upon the work of building up and strengthening your Association. I appeal to the lawyers of the State who are not members, to unite with us in the work of maintaining and uplifting the standard of professional ethics and judicial capacity, and thus may we perform a duty which we owe to our noble profession, and, at the same time, aid in preserving and protecting the rights of all the people of the commonwealth.

UNCERTAINTY OF LAW, ITS CAUSE AND REMEDY.

BY WILLIAM A. LEE.

Anthropologists divide the time of man's existence on earth into three ages—the stone age, the bronze age and the iron age—each particular age being indicated by the material out of which he fashioned the tools and implements of war used during such period.

If the history of law were to be divided into distinct periods, marked by its growth and development from the time that conscience first began to be awakened and the first rude principles of justice were embodied into a code of rules to govern man's action, the present period might very properly be termed the age of case law.

In the century and a quarter of our national existence the courts of this country have handed down more than five hundred thousand opinions, reported in about five thousand official reports and one thousand quasi official reports. The publication of many of these opinions has been duplicated by special reports, so that this great body of American case law is accessible to almost every lawyer and is constantly referred to and used by both bench and bar. The present generation will see this volume of case law doubled by the courts of this country alone.

Case law that has been well reasoned and that rests upon sound principle cannot be too widely circulated. The greatest growth of the law has always been, and will continue to be along this line. Our efforts should be to improve the system—

to remove some of the attendant evils that have grown up with it, rather than to limit its increase.

The opinions of judges, who have the capacity and the high purpose to fearlessly declare the law, cannot become too But the opinions of judges who do not possess these qualifications and who are incapable of discriminating between the true and the false doctrine of a case are like a two-edged sword. Such opinions are often productive of more evil than good, and the wider the publicity given to them only Decisions of this kind make the law increases the evil. uncertain and are a stumbling block in the way of the lawyer and the judge who seek to use them. It would be a decided gain to our jurisprudence if such opinions could be wholly eliminated from the reported cases. This class of case law is not only worthless but is often a potential influence for evil in that it tends to confuse and mislead both the bench and the bar and to render the law uncertain.

There is a growing tendency to follow precedent without regard to whether it is sound in principle or worthy of respect. Where a rule has become settled through a line of precedents, although it may not have been the best rule, it is often better to follow it rather than disturb existing conditions. But questions that are new in a particular jurisdiction should be correctly determined, regardless of the holding of courts in other jurisdictions.

The practice of following precedents, without regard to their being sound or logical, or without giving the question that original investigation and research that will enable the true to be distinguished from the false, tends to make a class of case lawyers, to dwarf the reasoning powers and retard the intellectual growth of those who follow such a practice. The practitioner is not wholly to blame for this, for however well anchored in reason and upon principle his position may be, if his

adversary has a precedent declaring a contrary rule, the court will usually follow such precedent without regard to its correctness. This will be the case even if the judge whose opinion is being followed has no qualifications as a jurist, but owes his position solely to the fact that he is a shrewd politician. The growing tendency of courts and lawyers to blindly follow precedent is responsible for much of the uncertainty and confusion that exists in many branches of the law.

In the very nature of things the law cannot be exact like a theorem in geometry or a principal in mechanics. strait line is the shortest distance between two points is susceptible of absolute proof, and the reasoning leading up to the demonstration is always the same, but with the law it must necessarily be varied to meet the ever-changing conditions to which it must be applied. In addition to this it must be administered by human agency and must necessarily partake of the weaknesses and idiosyncrasies of the judges who administer it. But there are certain elementary principles that are, or ought to be, as fixed and certain as a geometrical proposition, and yet we cannot take up a volume of reported cases without finding decisions that cause a feeling of disappointment because they violate every well known and fixed principle of the law and are at variance with reason and common sense. Some of these decisions are ingeneously worded and contain garbled excerpts from other cases that appear to support the holding, but upon examination, are found to have no application to the question at issue.

The courts are not alone responsible for much of this objectionable case law. Some lawyers in briefing cases, cite a large number of authorities indiscriminately from text books, digests or any source that may be accessible, frequently without examining the cases or giving any consideration as to whether they sustain the contention. More often than otherwise with this class of briefs an

examination of the cases cited will disclose the fact that they are of no value in aiding to solve the controversy The judge before whom the case is before the court. being heard will probably examine some of the authorities thus cited and find that they do not aid him in any particular, and will then discard the brief. If he be an able. conscientious judge, with a commendable pride in his decisions and a desire to declare the law as it should be, he will investigate the question unaided by counsel's brief, provided he has sufficient time and an opporunity to do so. But if he be a careless, indifferent judge, he will read portions of the citations, formulate his decisions as inclination may direct, and possibly cite authorities in as shiftless a manner as counsel has done. The result is usually a worthless precedent.

Every lawyer owes it to the court to critically examine the authorities relied upon and to eliminate from consideration, and thus spare the time of the court, all cases that do not tend to elucidate his position. Instead of the citations growing more numerous as the case proceeds from court to court unthit reaches the court of last resort, frequently they should become less so, and citations not tending to aid the court should be omitted and the argument restricted to the question in controversy.

If the evil of an erroneous decision did not extend beyond that particular case it would be comparatively harmless; but when we consider the wide publicity that is now given to the decisions of courts, their accessibility to the profession generally, and the proneness of both the courts and the bar to use such opinions, without proper discrimination, the evil becomes apparent. This class of decisions make the law uncertain and creates confusion regarding many questions which otherwise would be settled. It is not unusual to find text writers and annotators after discussing a subject and giving the authorities on both sides of the question not

venturing beyond an opinion as to the side supported by the weight of authority.

This condition is in part due to the inherent difficulties that cannot be entirely removed. As heretofore observed, the law is not and cannot be an exact science, because the poverty of our language is such that the precise meaning intended cannot always be correctly expressed, and also because of the further fact, that it must be administered through imperfect human agency. But these conditions do not afford a sufficient reason for the frequent failure of courts to apply principles that are elementary in their nature to a given case, in a practical and intelligent manner. The practice of following precedent without proper discrimination and without considering the principle involved, is, perhaps, the chief cause of the uncertainty that exists in much of the case law of to-day.

Such practice is responsible for that class of cases that find no support in reason and the logic of which often leads to the most absurd results, when sought to be applied to a given case As an illustration, in a comparatively recent case a very respect. able court declared "that where the statute requires an officer to perform a ministerial act, he will not be permitted in a mandamus proceeding to plead in justification of non-performance that the act would violate the constitution." The writ was directed against a board composed of three of the executive officers of the state, whose duties as members of such board were defined and prescribed by the constitution of the In a somewhat lengthy opinion containing many citations, none of which supported such a doctrine, the court succeeded in convincing itself of the correctness of the rule. If the court had considered the principle involved and the results that must necessarily follow such a ruling, a different conclusion would certainly have been reached.

The statute under which the action was brought pro-

vided that a writ of mandate may issue to compel the performance of an act which the law specially enjoins. the writ can only issue to compel the performance of an act which the law specially enjoins, it is self-evident that the writ will not issue to compel the performance of an act which the law has not enjoined. If a statute is unconstitutional it is not a law, and hence could not be a law that enjoined any kind of a duty upon any kind of an officer. To say that a statute is unconstitutional is to say that it is not a law. unconstitutional act confers no right, it imposes no duty and is as inoperative as though it had never been passed. When Judge Field declared this in Norton vs. Shelby County, 118 U. S. 425, he was simply stating what to every lawyer is axiom-An unconstitutional law is not merely voidable it is ab initio void. No power can breathe into it life or give to it any force or effect. How, then, could it be invoked to compel the performance of any act, or constitute grounds for compelling an officer to perform an act specially enjoined by law? Let us attempt to apply this doctrine to a given case.

The public press has recently contained extensive accounts about a message or signal of some kind which a certain gentleman of some standing in the scientific world claims was received from the planet Mars. Without troubling ourselves about whether or not the inhabitants of this far off planet had anything to do with the phenomenon that was so interpreted as a message from its people, if such a message was sent we may conclude that it was done by some system of wireless telegraphy. It is equally as probable that if communications between the inhabitants of these two worlds can be established that a subsidy out of the public treasury may be asked for, to construct the necessary appliances. Now, suppose that the law making power of a state should pass a statute appropriating all of the public funds that had theretofore been applied to the payment of the salaries of the

supreme judges to this purpose, and such statute directed the state's disbursing officers to honor all warrants issued in aid of the construction of a wireless telegraph line from the planet Mars to this sphere. In a mandamus proceeding to compel him to act, what could he answer? He could not plead in justification of his non-performance that an act appropriating public money for such a purpose was unconstitutional, for the courts have expressly declared that he could not do so. reductio ad absurdum method of argument be objected to as trifling with a grave subject, let us suppose another case that might probably arise. Suppose that the legislature enacted a statute requiring all the revenue provided for the support of the public school system be applied thereafter to endow and support denominational schools, and the officers having control of these funds were directed by such statute to apply them to such purpose. Could they successfully resist the application for a writ of mandate upon the ground that the act was unconstitutional? Not in a jurisdiction where the doctrine of this case prevails.

Reference to this case has not been made because it is any more extraordinary than others that might be mentioned. It illustrates the reason for so much of the uncertainty that exists in the law. It also raises a reasonable doubt about the law, as it is being administered in some jurisdictions, being the perfection of human wisdom as the earlier writers defined it.

There was a time when every lawyer would have unhesitatingly advised a public officer that a statute requiring such officer to perform an act repugnant to the supreme law should be disregarded. We must readjust ourselves to the new order of things. For while this opinion has been disregarded, and ignored in some cases involving precisely the same principle the court that announced it has never disapproved, overruled, or in any direct manner modified it. It was cited and

in part relied upon in a very late case not yet reported. This last mentioned case was also in the nature of a mandamus pro-The state constitution had enumerated certain officers and provided that they should receive for their services a compensation as fixed by law, which could not be diminished or increased so as to affect the salary of any officer during his The same article of the constitution also fixed the Subsequently the legislature salaries of such officers. attempted to increase the salaries of certain officers during the term for which they had been elected. In an action to compel the payment of such increase the respondent contended that the constitution prohibited the legislature from increasing or diminishing the salary of an officer during the term for which he had been elected and that the attempt to apply the statute to such officers who were in office at the time the law was passed would render the act unconstitutional. The learned counsel for relator in his brief cited the case first above mentioned, as he might very properly do, for it was not only applicable, but was conclusive of the question at issue if that doctrine was to prevail. It would effectively prevent the auditor from urging any such consideration upon the court. While counsel disclaimed any purpose to question the soundness of the decision, he proceeded at length to consider the constitutional question involved, thus in effect discrediting the authority of that case. The learned judge who wrote the opinion first announced that the constitutionality of the statute was not involved, and then devoted the remainder of the opinion to an argument the purpose of which was to show that the statute increasing the officer's salary, during the term for which he had been elected, was constitutional, because the previous fixing of such salary by the constitution was not a fixing of the salary by law.

Upon a question as to whether or not a Supreme Court will review upon certiorari, the action of a District Court in

dismissing or refusing to dismiss an appeal from a Justice Court in a jurisdiction where the constitution prohibits an appeal to the Supreme Court of an action commenced before a justice, the appellate court has announced a different ruling from its former opinion upon each of the three occasions that the question has been presented to it.

One is forcibly reminded of the old couplet that runs:

Winding in and winding out, Still to leave a man in doubt As to whether the snake that made the track Was going north or coming back.

Judicial precedents that juggle with words, that disregard principle, that reason upon one line to-day and upon another to-morrow, that are influenced by public opinion or any question of expediency, not only increase the uncertainty of the law, but cause disrespect for it and bring its administration into contempt.

Amid all of this uncertainty it is refreshing to turn from this class of so-called precedents to the great classics of jurisprudence written in the dawn of our nation's history and before the day when reason and principle had been so far lost sight of. Take for example the opinions of John Marshall, whose onehundredth anniversary of accession to the office of chief justice of the United States we have so recently celebrated. They still stand as monuments to his genius, his learning and his virtues; they have conferred an imperishable glory upon his country. When John Marshall was called to his high office, the court over which he was to preside had been in existence only eleven years, and less than one hundred cases had passed under its judgment. Its decisions were reported in three volumes of less than five hundred pages each. The courts of the colonies prior to the revolution and of the states after them, up to that time had less than ten volumes of reported cases. This was the condition of the jurisprudence of the country when John Marshall took his place at the head

of the national judiciary. The government had been organized only twelve years, and during that interval eleven amendments had been proposed, and adopted. The common law of the mother country had been the foundation of the system by which the rights of persons and property were to be determined, but scarcely anything else had been done to adapt the law to the new conditions that had arisen. Following his advent upon the bench in quick succession many of the great questions of constitutional, international and general law All of them involved the consideration of subjects comparatively new in the field of jurisprudence, for which no precedents could be found except in the correct application of principles to right and reason. For the first time in the history of the world had a written constitution become the organic law of a government. As an eminent writer has said, "John Marshall found the constitution paper and he made it power; he found it a skeleton and he clothed it with flesh and By his reason and his far-sighted wisdom he has so interpreted that venerable instrument, and has given to it such vitality and power that even Mr. Gladstone pronounced it the most wonderful work ever struck off at a given time by the brain and purpose of man.

The breadth of intellect, the clear and far-sighted vision possessed by John Marshall is given to but few men. The mention of his name is not in the belief that history will be repeated in every generation. But his many virtues, his lofty conception of the duties of a judge, his inflexible purpose to leave after him and to posterity judicial opinions that would bear the crucial test of time, that were founded upon the solid rock of sound principle rather than the shifting sands of expediency, may be emulated and followed by the jurists of every age and generation.

The remedy for some of the unsatisfactory conditions that now exist lies largely with the lawyers themselves.

They constitute one of the most intelligent and influential class of citizens. There has never been any great reform measure that has crystallized into law which has been brought about without their intelligent and powerful aid. From the ranks of this profession has come a great majority of our best statesmen and law makers. The judiciary must always come directly from the ranks of this profession. More than any other class of citizens they know what qualifications are required to make judges and who of their number possess such qualifications.

In the large commonwealths, and particularly in the great cities, the influence of the members of the bar association is such that few men can secure judicial preferment against this influence. It should be so in all places where the work of the association is carried on upon a high plan.

Every young man upon his admission to the bar should feel that it was a first duty which he owed to his country, to his state and to his profession to join the association of his professional brethren and exert his individual efforts in the only effective way, through the association. The older members of the bar, those who during the years past have wrested honor, social distinction or political preferment from their calling, should not refuse to give its organization the benefit of their wisdom and counsel.

The bar should do its work in such manner and at such times that it would be free from all partisan bias or personal intrigue and command the moral support of the entire community. Its purpose should be to cultivate the spirit of professional brotherhood, to keep the profession up to the high ideals that have characterized it in times past. And above all, it should demand that the judiciary, and particularly the courts of last resort, whose opinions must serve as a guide for future generations, should be made up of men of acknowledged ability, of lofty character, men who have a proper

conception of the great work they are called upon to do. Every jurist whose opinions become precedents for future action in like cases should be made to feel that it is little less than treason to his country and lasting dishonor to himself to allow any question of expediency, of public clamor or of personal interest to sway his judgment or influence his action in any case.

CONSTITUTION AND BY-LAWS

OF THE

STATE BAR ASSOCIATION OF UTAH.

CONSTITUTION.

ARTICLE I. The name of the Association shall be The State Bar Association of Utah.

ART. II. The object of the Association shall be the elevation of the standard of professional learning and integrity; to inspire the greatest degree of respect for the efforts and influence of the Bar in the administration of justice; and to cultivate fraternal relations among its members.

ART. III. The officers of the Association shall be a President, a Vice-President from each Judicial District, Secretary, Treasurer, an Executive Council of five members, and a Committee on Grievances consisting of three members, which officers shall be elected annually and hold until successors are elected and accept.

ART. IV. The President shall deliver an address at each regular annual meeting of the Association, and the duties of the President, Vice-President, Secretary and Treasurer shall be such as usually pertain to those offices respectively.

ART. V. Regular meetings of the Association shall be annually held at Salt Lake City on the second Monday in January, at 7:30 p. m., at the Supreme Court Room, for the election of officers, and for addresses and discussions; also for the transaction of any other business of the Association. The President and the members of the Executive Council and Committee on Grievances shall be elected at the annual meeting by ballot.

Special meetings may be called at any time by the Executive Council or the President, and must be called when a request

signed by fifteen members of the Association is made therefor. And the notice of such special meeting shall be by publication in the daily papers of Salt Lake City, Ogden and Provo, or by personal notice sent by the Secretary to each member of the Association; in either case not less than three days' notice of the time and place of holding such meeting shall be given.

ART. VI. A quorum for the transaction of business shall be twenty members.

ART. VII. No person shall be admitted to membership in this Association, who is not a member of the Bar of the Supreme Court of Utah.

ART. VIII. All applications for membership at the annual meeting shall be referred to the Executive Council, who shall report on the same to the Association, with their recommendation, and no person shall be admitted to membership except by a two-thirds' vote of the members present. During the interval between annual meetings, applications for membership may be determined by the Executive Council. Each member shall pay an admission fee of \$5.00, and annual dues, after the first year, of \$3.00. Any member may be expelled on a vote of a majority of the members of the Association.

ART. IX. The Executive Council shall manage the affairs of the Association, subject to the Constitution and By-Laws; it shall, also, on or before the first day of May of each year, designate such number of members not exceeding six, to prepare and deliver or read, at the next annual meeting thereafter, appropriate addresses or papers upon subjects chosen and assigned by the Council, to each of such members as may be so selected for such purpose.

ART. X. All addresses delivered and papers read before the Association, a copy of which is furnished by the author, shall be lodged with the Secretary. The annual address of the President, the reports of committees and all proceedings of the annual meeting shall be printed; but no other address delivered or paper read shall be printed except by order of the Executive Council.

ART. XI. The Committee on Grievances shall be charged with the investigation of all complaints against members of the Association, members of the Bar and officers of the Courts, and also

of all complaints which may be made to them in matters affecting the members of the legal profession, the practice of law and the administration of justice, and shall report thereon to the Association, with such recommendation as they may deem proper. The proceedings of such committee shall be secret.

ART. XII. If a vacancy occurs in the office of President, the Executive Council shall designate a Vice-President to fill his place. Said Council shall also fill any vacancy that may occur in the office of Secretary or Treasurer; and said Council and said Committee on Grievances may respectively fill any vacancy that may occur therein.

ART. XIII. The Treasurer shall render an account annually to the Executive Council, and said Council shall report the same to the Association at its annual meeting.

'ART. XIV. The Executive Council shall cause to be printed such number of the Constitution and By-Laws of the Association, with the roll of the members of the Association, as it shall deem best, not exceeding one thousand copies, and shall distribute the same to members of the Association, and to such other persons, or associations, or societies as it may deem prudent; and shall, with the proceedings of each annual meeting, print a roll of the members of the Association.

ART. XV. This Constitution shall remain unalterable except by a vote of two-thirds of all members.

BY-LAWS.

SECTION I. The order of business at each annual meeting shall be as follows:

- 1. Opening address by President.
- 2. Report of Executive Council.
- 3. Consideration of applications for membership.
- 4. Report of Committee on Grievances.
- 5. Report of standing and special committees.
- 6. Delivering or reading of addresses and papers.
- 7. Miscellaneous business.
- 8. Election of officers.

SEC. II. There shall be appointed by the President and Executive Council each year, three members as delegates to the American Bar Association for that year.

SEC: III. There shall be a standing committee to consist of the President and four members, appointed by him at each annual meeting, on the "State of the Law," whose duty shall be to report at the annual meetings important amendments, revisions or additions to the law of the State, as developed in legislation or by judicial decisions, together with such suggestions as may seem to be necessary.

SEC. IV. There shall be a standing committee of ten, appointed annually by the President and Executive Council, on "Judicial Candidates and Nominations," whose duty shall be to investigate and report at the annual or special meetings of the Association, upon the qualifications and fitness of the candidates for judicial offices, other than those of Justice of the Peace.

SEC. V. These By-Laws may be amended at any regular meeting by a majority vote of the members present.

REGULAR MEMBERS.

Allison, E. M	Salt Lake City
Armstrong, Geo. G	Salt Lake City
Bachman, G. H	
Baldwin, Chas	Salt Lake City
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Bennett, C. W	
Booth, H. E	
Bradley, Wm. M	Salt Lake City
Browne, T. Ellis	
Buys, Wm	
Critchlow, E. B	
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Henderson, II. P	Salt Lake City
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Hutchinson, W. R	Salt Lake City
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Kinney, Clesson S	Salt Lake City
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Letcher, J. R	Salt Lake City
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Moyle, O. W	

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Willey, D. O Salt Lake City
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Witcher, A. B Salt Lake City
Young, Le GrandSalt Lake City
Zane, C. S Salt Lake City
· · · · · · · · · · · · · · · · · · ·

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Judge R. N. Baskin, Chief Justice State Supreme Court	. Salt Lake City
Judge G. W. Bartch, Asso, Justice State Supreme Court	Salt Lake City
Judge W. M. McCarty, Asso. Justice State Supreme Court,	Salt Lake City
Judge John A. Marshall, Federal Court	. Salt Lake City
Judge Chas. H. Hart, First Judicial District	Logan
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Judge W. C. Hall, Third Judicial District	Salt Lake City
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Judgs Thos. Marioneaux, Fifth Judicial District	Nephi
Judge J. F. Chidester, Sixth Judicial District	Panguitch
Judge Jacob Johnson, Seventh Judicial District	







REPORT

OF THE

Seventh Annual Meeting

of the

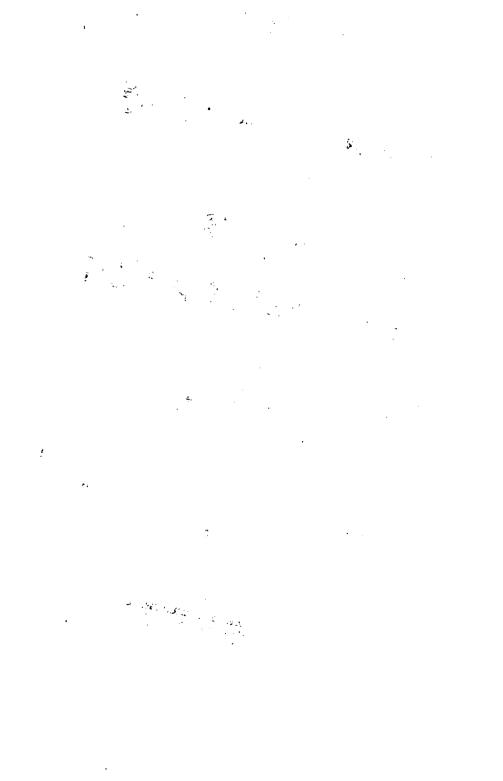
STATE BAR ASSOCIATION

OF

UTAH.

HELD AT SALT LAKE CITY, JANUARY 12, 1903.

ARPER BROTHERS, Publishers and Printers SALT LAKE CITY,



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ALTERNATES TO THE AMERICAN BAR ASSOCIATION FOR 1804.

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VICE-PRESIDENT:First Judicial District S. R. THURMAN
VICE-PRESIDENTSecond Judicial DistrictPRESSLY DENNY
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TREASURER ELMER B. JONES

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GRANT H. SMITH, Secretary, JOHN A. MARSHALL.

F. S. RICHARDS,

E. M. ALLISON.

COMMITTEE ON GRIEVANCES.

THOMAS MARSHALL, C. S. VARIAN, J. H. MACMILLAN.

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EXECUTIVE COUNCIL.

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JOHN M. ZANE, Secretary,

ANDREW HOWAT,

P. L. WILLIAMS,

E. M. ALLISON

COMMITTEE ON GRIEVANCES.

J. A. WILLIAMS.

A. T. SCHROEDER,

C. S. VARIAN.

DELEGATES TO THE AMERICAN BAR ASSOCIATION FOR 1896.

J. G. SUTHERLAND,

F. S. RICHARDS,

J. A. MARSHALL.

OFFICERS FOR THE YEAR 1897.

PRESIDENT
VICE-PRESIDENTFirst Judicial DistrictCHARLES H. HART
VICE-PRESIDENTSecond Judicial DistrictHENRY H. ROLAPP
VICE-PRESIDENTThird Judicial DistrictOGDEN HILES
VICE-PRESIDENTFourth Judicial DistrictW. N. DUSENBERRY
VICE-PRESIDENTFifth Judicial DistrictE. V. HIGGINS
VICE-PRESIDENTSixth Judicial DistrictWILLIAM M. McCARTY
VICE-PRESIDENTSeventh Judicial DistrictJACOB JOHNSON
SECRETARY
TREASURERE. O. LEE

EXECUTIVE COUNCIL.

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JOHN M. ZANE, Secretary,

ANDREW HOWAT,

P. L. WILLIAMS,

E. M. ALLISON.

COMMITTEE ON GRIEVANCES.

J. A. WILLIAMS, A. T. SCHROEDER, H. E. BOOTH.

DELEGATES TO THE AMERICAN BAR ASSOCIATION FOR 1897.

JOHN W. JUDD, P. I. WILLIAMS, JOHN M. ZANE.

OFFICERS FOR THE YEAR 1898.

PRESIDENT
VICE-PRESIDENTFirst Judicial DistrictCHARLES H. HART
VICE-PRESIDENTSecond Judicial DistrictHENRY H. ROLAPI
VICE-PRESIDENT Third Judicial DistrictOGDEN HILES
VICE-PRESIDENTFourth Judicial DistrictW. N. DUSENBERRY
VICE-PRESIDENT Fifth Judicial District E. V. HIGGINS
VICE-PRESIDENTSixth Judicial DistrictWILLIAM M. McCARTY
VICE-PRESIDENT Seventh Judicial DistrictJACOB JOHNSON
SECRETARY CLESSON S. KINNEY
TREASURER GEO. L. NYE

EXECUTIVE COUNCIL.

JAMES H. MOYLE, Chairman.

JOHN M. ZANE, Secretary,

ANDREW HOWAT,

P. L. WILLIAMS,

E. M. ALLISON.

COMMITTEE ON GRIEVANCES.

OFFICERS FOR THE YEAR 1902.

(No annual meetings were held for the years 1899, 1900 and 1901.)

PRESIDENT
VICE-PRESIDENTFirst Judicial DistrictCHARLES H. HAR
VICE-PRESIDENTSecond Judicial DistrictHENRY H. ROLAPI
VICE-PRESIDENTThird Judicial DistrictFRANK PIERCE
VICE-PRESIDENTFourth Judicial DistrictJOHN E. BOOTI
VICE-PRESIDENTFifth Judicial DistrictTHOS. MARIONEAU
VICE-PRESIDENTSixth Judicial DistrictWILLIAM M. McCARTY
VICE-PRESIDENTSeventh Judicial DistrictJACOB JOHNSON
BECRETARY CLESSON S. KINNEY
TREASURER

EXECUTIVE COUNCIL.

JAMES H. MOYLE, Chairman,

E. B. CRITCHLOW, Secretary. ANDREW HOWAT.

P. L. WILLIAMS,

E. M. ALLISON.

COMMITTEE ON GRIEVANCES.

FRANK B. STEPHENS,

WILSON I. SNYDER, H. E. BOOTR.

COMMITTEE ON THE STATE OF THE LAW.

C. S. VARIAN, Chairman, ELMER B. JONES, M. L. RITCHIE, FRANK PIERCE, WALDEMAR VAN COTT.

OFFICERS FOR THE YEAR 1903.

PRESIDENTANDREW HOWAT
VICE-PRESIDENTFirst Judicial DistrictCHARLES H. HART
VICE-PRESIDENTSecond Judicial DistrictHENRY H. ROLAPP
VICE-PRESIDENTThird Judicial DistrictWM. A. LEE
VICE-PRESIDENTFourth Judicial DistrictJOHN E. BOOTH
$\label{eq:vice-president} \textbf{VICE-PRESIDENT}\textbf{Fifth} \textbf{Judicial District}\textbf{THOS}. \textbf{MARIONEAUX}$
VICE-PRESIDENTSixth Judicial DistrictJ. F. CHIDESTER
VICE-PRESIDENTSeventh Judicial DistrictJACOB JOHNSON
SECRETARY J. WALCOTT THOMPSON
TREASURERGEO. I. NYE

EXECUTIVE COUNCIL.

E. B. CRITCHLOW, Chairman

M. M. WARNER,

P. J. DALY,

W. L. MAGINNIS,

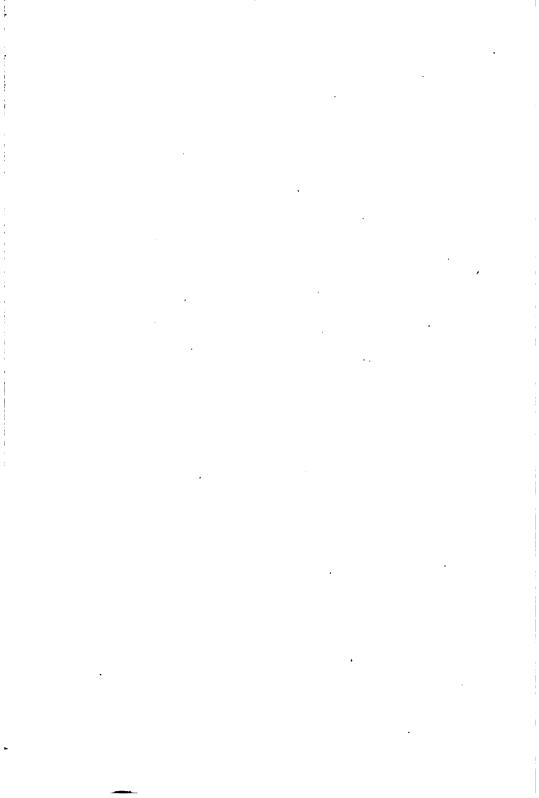
GRANT H. SMITH.

COMMITTEE ON GRIEVANCES.

P. L. WILLIAMS, Chairman, JOS. T. RICHARDS, M. M. KAIGHN.

COMMITTEE ON THE STATE OF THE LAW.

ANDREW HOWAT, Chairman, M. L. RITCHIE, R. W. YOUNG
T. D. LEWIS, C. S. VARIAN.



MINUTES

Of the Seventh Annual Meeting of the State Bar Association of Utah, held in the Federal Court Room, Salt Lake City, Utah, January 12, 1903.

The meeting was called to order by the President, Chas. S. Varian, who then delivered his annual address.

The regular order of business was then suspended and the reading of papers taken up. Mr. M. M. Warner of Provo, read a paper on the subject: "Precedent vs. Justice." Mr. H. S. Tanner of Salt Lake City, then read a paper on the subject of "Comity."

The following named applicants, having been reported favorably by the Executive Council, were duly elected as members of the Association: Messrs. H. S. Tanner, Mathonihah Thomas and William M. McCrea, all of Salt Lake City, and Mr. D. D. Houtz of Provo. Mr. J. F. Chidester, having been appointed as judge of the Sixth Judicial District, was elected an honorary member of the Association.

Mr. P. J. Daly then offered the following resolution and moved its adoption, which motion, being seconded by Mr. Geo. M. Sullivan, was adopted by the Association.

"Whereas, many courts of the State of Utah in matters where reference may be had under the law are in the habit of selecting and appointing persons who are not members of the bar of the Suprème Court of the State; Now, therefore, be it resolved, by the State Bar Associa-



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the State of Utah in matad under the law are in the ating persons who are not supreme Court of the State; d, by the State Bar Association of Utah, that a committee of three lawyers be appointed to draft a bill for presentation to the Legislature amending the law so that, in all matters where a reference is ordered, the court shall appoint a member or members of the bar of the Supreme Court of the State of Utah in active practice."

in active practice.			
The Secretary's financial report was then reing:	ad	sh	ow-
Cash collected from members\$170 00			
Cash expended	9	57	58
Cash turned over to Treasurer	#		42
Cash on hand			
Cash on hand		20	00
	\$ 1	70	00
The Treasurer's report was then read showing	ng	:	
Cash on hand\$137 57	·		
Cash on hand at date of last report	*	30	15
Cash received from dues paid direct	"	15	00
Cash received from Secretary			15
•			
	\$ 1	37	57
The Secretary's report as to membership v	vas	th	en
read of which the following is a summary:		•	
Total membership as per list of 1898, not includir	107		
honorary members		1	105
Increase in membership for the year 1902	•	_	13
	, .·		
Total		· 1	18
Members on list of 1898, dead, placed on honorar	٠v		
list, or delinquent			63
Total membership to date not including hon-	ი-		
rary list			53
Present honorary members			12
Total membership in good standing			67

All of the above reports were received by the Association and ordered filed with the Secretary.

The regular annual election of officers was then taken up and the following members were duly elected officers for the ensuing year:

First Judicial District ... Judge Charles H. Hart Second Judicial District ... Judge Henry H. Rolapp Third Judicial District ... William A. Lee. Fourth Judicial District ... Judge John E. Booth Fifth Judicial District ... Judge Thomas Marioneaux Bixth Judicial District ... Judge John F. Chidester Seventh Judicial District ... Judge Jacob Johnson

Secretary J. Walcott Thompson Treasurer George L. Nye

Executive Council: E. B. Critchlow, Chairman; M. M. Warner, P. J. Daly, M. L. Maginnis, and Grant H. Smith.

Committee on Grievances: P. L. Williams, Chairman; Joseph T. Richards and M. M. Kaighn.

Committee on the State of the Law: Andrew Howat, Chairman; M. L. Ritchie, R. W. Young, T. D. Lewis and C. S. Varian.

Motion carried that when the Association adjourn it be to meet on the 16th day of February, 1903, at eight o'clock p. m.

Motion carried that the President's address and the other papers read at this session be referred to the Committee on the State of the Law.

A vote of thanks was then extended to the retiring President, Charles S. Varian, and to the retiring Secretary, Clesson S. Kinney, for past services.

Upon motion, duly carried, the meeting then adjourned until Monday, February 16, 1903, at eight o'clock p. m. CLESSON S. KINNEY, Secretary.

ADJOURNED SESSION OF THE REGULAR ANNUAL MEETING.

FEBRUARY 16, 1903, 8 o'clock p. m.

An adjourned session of the regular annual meeting of the State Bar Association was held in the Federal Court Room, Salt Lake City, Utah, on February 16, 1903, at 8, o'clock p. m. President Andrew Howat was in the chair.

The President called for the reports of the Committee on Grievances in the matters of the charges filed against R. H. J. of Brigham City, Utah, and E. S. A. of Salt Lake City, Utah.

At the request of Mr. Williams, Chairman of the Committee on Grievances, the Secretary read the report of the committee in the matter of the charges preferred against R. H. J. The report not being final, owing to the lack of time for a full investigation, Mr. Williams moved that the Association grant to the Committee on Grievances an extension of sixty days time in which to complete the investigation and report finally on the charges.

Mr. Varian moved, as a substitute to the motion of Mr. Williams, that when this meeting do adjourn it adjourn to Monday evening May 4, 1903, at 8 o'clock. On the acceptance of the substitute by Mr. Williams the motion of Mr. Varian was duly seconded and carried.

The Secretary then read the report of the Committee on Grievances in the matter of the charges preferred against E. S. A.

Mr. Williams moved that the report be received and adopted by the Association. On the President's calling for remarks the following members of the Association spoke to the motion: Messrs. Varian, Williams, Sanford.

Lee, Ritchie, Kaighn, Joseph T. Richards, McDowell and Daly.

Mr. Daly moved that the report be received which motion, being accepted by Mr. Williams as a substitute, was duly seconded and carried.

Mr. McDowell then moved the adoption of the committee's report. The motion was duly seconded and unanimously carried.

Mr. Varian moved that a special committee of three be appointed by the chair to present the matter of the charges against E. S. A. to the Supreme Court of the State of Utah. Motion duly seconded and carried. The President appointed the following members to serve on the committee: Messrs. ('. S. Varian, E. B. Critchlow and M. L. Ritchie.

The Executive Council reported favorably on the applications of T. D. Lewis, Esq., and Morris Sommer, Esq., for membership and they were duly elected members of the Association.

Mr. P. J. Daly moved that the Association hold a banquet in the near future and that the President be authorized and directed to appoint a committee of five to make all necessary arrangements for the same. Motion duly carried.

The President announced that he would name the members of the committe at his convenience.

The meeting then on motion adjourned until Monday evening, May 4, 1903, at 8 o'clock.

J. WALCOTT THOMPSON,

Secretary.

MARCH 13, 1903.

The President this day announced the appointment of

the following members of the Association to serve on the Committe of Five on the Banquet: Messrs. P. J. Daly, Chairman; Le Grand Young, W. Van Cott, J. R. Letcher and A. T. Sanford.

J. WALCOTT THOMPSON, Secretary.

An adjourned meeting of the State Bar Association of Utah was held in the Federal Court Room, at Salt Lake City, Utah, at 8 o'clock p. m., Monday, May 4, 1903. President Andrew Howat presided.

On motion duly made and seconded Mr. P. J. Daly was elected secretary pro tem.

On motion by Mr. Williams, duly seconded, the meeting adjourned to meet Thursday evening, May 7, 1903, at 8 o'clock, at the Federal Court Room.

P.J. DALY, Secretary pro tem.

An adjourned meeting of the State Bar Association of Utah was held Thursday, May 7, 1903, at 8 o'clock p. m., at the Federal Court Room.

Mr. P. J. Daly was duly elected secretary pro tem.

On motion of Mr. J. T. Richards, duly seconded, the meeting adjourned until Friday evening, May 8, 1903, at 8 o'clock.

P. J. DALY, Secretary pro tem.

An adjourned meeting of the State Bar Association of Utah was held in the Federal Court Room at Salt Lake City, Utah, Friday, March 8, 1908, at 8 o'clock p. m. President Andrew Howat presided.

Mr. P. J. Daly was duly elected secretary pro tem:

A quorum being present, Mr. P. L. Williams, Chairman of the Committee on Grievances, reported on the

charges made by C. S. Price, Esq., and Edward R. Chase, Esq., against R. H. J. of Bingham. Mr. Williams read from a voluminous report and recommended that a committee be appointed to present the matter to the Supreme Court.

Mr. Snyder moved that the report of the committee be accepted. Seconded by George H. Smith, Esq.

Mr. J. asked permission to be heard in his own behalf and—no objection being made—addressed the Association at length, objecting to the report of the Committee on Grievances.

Motion to adopt Committee's report carried.

Mr. C. S. Varian moved that a committee of three be appointed to present the matter to the Supreme Court on the charges embraced in the report of the Committee on Grievances and that the Finance Committee and Treasurer of the Association be directed to audit and pay all expenses necessarily accruing from any order the Supreme Court may make and any examination in the premises upon certification of the chairman of the committee so appointed.

Motion to adjourn carried.

P. J. DALY. Secretary pro tem.

The President subsequently appointed the following members of the Association to act as the committee of three to present the charges preferred against R. H. J., to the Supreme Court: R. W. Young, Chairman; J. W. N. Whitecotton and Charles Baldwin.

J. WALCOTT THOMPSON,

Secretary.

PRESIDENT'S ADDRESS.

BY CHARLES S. VARIAN, PRESIDENT.

(Jentlemen of the Bar Association:

Again, I welcome you to our annual meeting, which I hope will prove profitable and interesting to you all. Since our last meeting, Jabez G. Sutherland, the first President of our Association, has passed away. Judge Sutherland came to Utah in the year 1873, and for many years and until overcome by an insiduous and distressing malady, held long his place as a leader of the Bar. During a long and useful life, he held, at times, prominent official positions, and also, with critical and laborious authorship, performed a duty the lawyer is said to owe to his profession. As judge, congressman, author and lawyer, he rounded out a long and busy life, with works of usefulness to the people and the State.

In my last annual address, I took occasion to direct your attention to a number of questions, which seemed to demand consideration at your hands. I here renew the recommendations then made, and particularly direct your attention to the necessity for a change in the law governing admission of attorneys to the Bar. In June last, I was requested by the Chairman of the Committee on Legal Education of the American Bar Association, to furnish that committee with information of any changes that had been made in our law or rules of court, regulating the admissions to the Bar, or legal education, during the past two years. In my reply to his communication, I stated that, although there had been no changes in the law or rules

of court during the period of time mentioned, I had, in my annual address, directed the attention of the Association to the matter, which had committed the subject to a committee appointed at the time. The matter is of such importance, that I take leave here to repeat, in part, what I have heretofore said, with the earnest recommendation that the Association take some action in the premises.

"In my opinion, the time has arrived for a change in the law governing the admission of attorneys to the Bar. Our statute, (R. S., Sections 106-7-8), authorizes an examination of applicants by the Supreme Court, or by a committee appointed by the Justices thereof. In fact, the court never makes such an examination itself, but the entire matter is committed to an examining committee appointed by the court, whose report is always confirmed. The duty of examining candidates for the Bar should be imposed upon the Supreme Court. The examinations should be public and upon questions propounded in writing and framed with care and method within the lines of a prescribed course of study, and held under such restrictions as would prevent faking or favoritism. should either require the graduation of the candidate at a regular law school, having a prescribed course of at least four years, or a certain course of study of not less than four years, which should include defined branches of the law and prescribed text books. The examination of applicants should be searching and thorough, and made in open court by the Judges themselves, or under their watchful supervision. Since the law commits the matter to the wisdom and discretion of the Judges, the Bar has the right to demand a strict and conscientious performance of their duties."

This is of course, but an expression of individual opinion, presented tentatively with a view of inducing such action by the Association as its wisdom may determine.

During the summer I received a communication from

State Senator Edward T. Taylor of the State of Colorado, Chairman of a commission appointed by the legislature of that state to investigate the "Torren's System of Registering Titles to Land," seeking a general statement from me of the views entertained by the members of our Bar upon the question. I was obliged to reply that our Association had not given the matter any consideration, and that there was no expressed public opinion here, as yet, upon the question. Inasmuch as this system of registration of titles has already been adopted in some of the states, and is pressing the attention of others, it would seem that this Bar Association might well begin to consider and discuss the question.

At one of its annual meetings, the American Bar Association adopted the following resolution:

"RESOLVED, That the State Bar Associations of the United States be requested to report, on or before the first day of August of each year to the Secretary of the American Bar Association, a brief outline or summary of the year's work, including the titles of addresses read before them, and a synopsis of all affirmative action taken on reform legislation recommended by the Association."

It would appear to be very desirable for this Association to keep in touch with the American Bar Association, which, as a National body, is exercising a powerful influence in the directing of legislation along proper lines. I recommend that the Association provide for a compliance with the above request; and further, that provision be made for the printing of the proceedings of our annual meetings immediately upon their conclusion, so that a proper system of exchange may be instituted and maintained with the different state associations.

Again, I direct your attention to the matter of changing the time of the annual meeting. If this meeting were held in the spring or early part of the summer, I am in-

clined to the opinion that the convenience of the members would be better served.

In February and April of the last year, the President received charges preferred against two members of the Bar, respectively, and referred them to the Committee on Grievances, which committee, after investigation, made a report in each case with recommendations that both matters be referred to the Association. In accordance with such recommendations I have filed said reports with the Secretary.

The legislature is again in session, and the question of an increase in judicial salaries may well be considered. The matter has been considered and discussed generally by members of the Association and others of the Bar, and, it is believed there is a practical unanimity of conviction upon the subject. I invite your careful attention to the question, with a view to the appointment of an appropriate committee to draft and present to the legislature a proper bill for the increasing of judicial salaries, if, in your judgment, you deem such course expedient.

There are some other matters in which lawyers must have an abiding interest, and to which I direct your attention.

The procedure sometimes adopted in the matter of the adjudication and commitment to the asylum in cases of insanity, it seems to me, calls for a protest. In the Third Judicial District, the proctice of the court seems to be as follows: In accordance with a standing order, the issuing of the warrant of arrest and the hearing of the accusation of insanity, are referred to the clerk who hears the evidence and reports upon the whole matter, which report is subject to confirmation by the court. In view of the fact that these cases necessarily involve the personal liberty of the citizen, the question so presented must always be appropriate for discussion by an assemblage of lawvers. The taking of a man from his family and society and depriving him of

his liberty by an enforced imprisonment for an uncertain term, presents a question of the gravest importance. Under our statute, a man may not be committed to prison for the violation of law for the period of a single day, except upon the verdict of a jury, or after opportunity afforded the defendant to have a jury pass upon his case. Since the time of John, it has been the unbending rule of the English law that the liberty of the person should not be violated, except by authority of the law of the land. In the great Charter of human rights, then exacted by the barons from the English king, it was said:

"No freeman shall be seized or imprisoned, or dispossessed, or outlawed, or in any way destroyed; nor will we condemn him, or commit him to prison, except by the legal judgment of his peers, or by the laws of the land. To none will we sell, to none will we deny, to none will we delay right or justice."

Through the mist of the centuries this immortal declar ation still shines with a bright and constant light.

Wherever the English law has held its sway, this pledge to a free people has been maintained. There have been temporary encroachments by despotic power, which dimmed its light and denied its promise, but ever have the people sternly resisted such attempts and restored the great declaration to its proper place in the scheme of government; and, today, it is written in the organic law of each of the states.

I have not found in literature a more eloquent, or a nobler tribute to this great principle of constitutional law in free governments, than the following eulogy reproduced here from an address delivered by U. M. Rose (late President of the American Bar Association), before the State Bar Association of Pennsylvania:

"As an unborn forest sleeps unconsciously in an acorn cup, all the creations and all the potentialities of that civ-

ilization lay unfolded in the guaranty of personal liberty and of the supremacy of the law that was secured at Runnymede. The various bills and petitions of rights, and the Habeas Corpus Act, while they have given new sanctions to liberty, are but echoes of the Great Charter; and our Declaration of Independence is but the Magna Charta, writ large and expanded to meet the wants of a new generation of freemen, fighting the battle of life beneath other skies. Worth all the classics! Yes, the classics that have survived and the classics that have perished. might be to us the lost book of Livy, whose pictured page is torn just where its highest interest begins, or even some song of Homer, which, now lost in space, shall charm the car and bewitch the human heart no more, we could not exchange for them a single word of those uncouth but grand old sentences, which, having taken the wings of the morning, have incorporated themselves with almost every system of laws in Christendom, and which still ring out in our American constitutions with a sound like that of the trampling of armed men, marching confidently up to battle; words which for ages have staved the hand of tvranny, and which have extended their protection over the infant sleeping in its cradle, over the lonely, the desolate. the sorrowful and the oppressed. Uttered by unwilling lips, and believed by the wretch from whom it was extorted that it had scarcely an hour to live, the Magna Charta marks an epoch in the annals of mankind. began a revolution that has never gone backward for a single moment; and was the precursor of that civilization the dawn of which our eyes have looked upon with joy and pride, and whose full meridian splendor can be forseen by God alone."

Written in our bill of rights, no apology is needed for directing your attention to the declaration of Magna Charta. Indeed, we are expressly admonished by the constitution, that, "frequent recurrence to fundamental principles is essential to the security of individual rights and the perpetuity of free government."

By the common law there was always a writ to inquire whether a man be a lunatic or not, and the question was tried by a jury; and when, by Act of Parliament the care of the persons and property of lunatics was committed to the Crown, and thence delegated by a special prerogative commission to the Chancellor or Lord Keeper, the determination of this main question was reserved to the law courts, or to the law side of the court of chancery. It never has been and is not now within the inherent jurisdiction of a court of equity. Whether, under our constitution the determination of such a matter, so momentous to the individual, may be judicially had without the intervention of a jury, may, perhaps, be an open question. events, it need not be now considered, since it may be affirmed with reasonable certainty, that the power to decide the question of sanity in a given case is a judicial power, and cannot be delegated or surrendered. our statute clearly indicates as the legislative intent. The information must be presented to the District Judge of the county where the alleged insane person shall be found; the Judge may examine the informant under oath, and, if satisfied there is reasonable cause, must investigate the grounds thereof: he must issue his warrant, and cause the accused to be brought before him, unless he shall find that it would probably be inexpedient to have the accused attend personally; he must hear the testimony for and against the application; any citizen of the county, or any relative of the person alleged to be insane may appear and resist the application, and both parties may appear by counsel; the Judge must cause to appear before him two practicing physicians in medicine, before whom, he (the Judge) shall examine the charge. The physicians are required to make a certificate under oath, setting forth answers to statutory questions propounded to them, and

thereupon the Judge as soon as practicable, must conclude his investigation, and must find whether the person alleged to be insane, is insane, and if insane, whether he is a fit subject for commitment to the asylum, and must commit or discharge, as his finding shall be.

Such a power as here conferred, involving as it does the determination of the question of personal liberty in the most absolute sense, cannot be other than a judicial power, and may not be exercised otherwise than in accordance with the law of the land. Surely, it could not be delegated in whole or in part, to ministerial officers. Surely, if we understand the true interpretation of the constitutional provisions, which here, as in every other state in the Union, serve to safe guard the fundamental rights of the people, the legislature itself must lack authority to authorize such a delegation of power. At all events, it has not attempted to do so.

I do not direct your attention to this matter because of any supposed maladministration of the law, which has resulted in any pronounced wrong being done to any citizen. There has been none to my knowledge. I speak because experience teaches that abuses do and will arise in the administration of law, where the constitutional guaranties of protection are permitted to be relaxed. our people, there are none who need more the utmost security afforded by the guaranty of due process of law, than those who are charged with mental weakness, unfitting them for further association with family and friends. the solution of such a question in each individual case. the voice of humanity, as that of the law, declares that the evidence and opinion of the witnesses, laymen and alienists alike, should be subjected to the severe scrutiny of trained and experienced judicial minds.

The opinions of conservative men generally concur in a conviction, that the organic law of the state ought

not to be amended without careful deliberation, and only in response to an ascertained public necessity. When, however, it sufficiently appears that a constitutional provision is operating in hostility to the interests of the people, there should be no hesitation in removing it. Unfortunately for the public interests, our constitution so emasculated the grand jury system as to practically deprive the state of some of its principal benefits. The scheme devised by the constitution seems to have contemplated substantially, only the administration of the criminal law, and in that connection only, the purpose and usefulness of a grand jury was considered. The substance of this scheme is that al! offenses against the law shall be prosecuted by information made by the prosecuting officer, and that such prosecution shall be in some measure in his discretion. It is true, that a grand jury is contemplated, apparently for the purpose of finding indictments, but it is also provided in the same connection, that a grand jury shall not be drawn or summoned, "unless in the opinion of the Judge of the District the public interest demands it." In the light of the context, this language, "public interest," seems to have reference alone to the administration of the criminal law. But, if this is true, it is a narrow view of the duties and functions of a grand jury.

From time immemorial, the grand jury of the county or district has been invested with high and important functions as an officer of the court. Its duty is to investigate offenses and to present offenders against the law. But this is not all of its duty. As a conservator of the public interest and a censor of the public morals, it has always been accustomed to supervise the official conduct of public servants and with watchful eye to note the administration of the law. Within its jurisdiction is not only the maladministration of public office and the misapplication of public funds, but also the administration of all the public financial concerns of the county, including

the negligent or inefficient management and control of affairs by public officers. When the trusted employes of banks and other private institutions surrender to others the trusts reposed in them, it is in accord with prudent business methods to investigate their accounts and ascertain their balances. In like manner, it is the duty of the grand jury to investigate the public offices of the county and state in the interest of the people, from time to time as occasion serves. Such investigation is not made to depend upon actual knowledge of conditions existing which make the investigation necessary, but it is a part of a scheme of government, the best as vet devised by man for the prevention of official abuses and the protection of the public. It contemplates the ascertaining of the true condition of the public business, from time to time, and the presenting of the results to the people. No man or official is so high—none so low in the scale of the public service, as to be exempted from this visatorial scrutiny by the grand jury.

In the nature of things, the efficiency of this instrument of the law in such work is seriously impaired, if the existence of the grand jury is made to depend upon the discretion or opinion of any other public officer. So far as the administration of affairs and the condition of the public offices are concerned, it must be apparent, that, in the major number of instances, the facts necessary to convince the mind of the Judge of an existing necessity for a grand jury would and could not be presented or realized until too late for the full accomplishment of the purposes to be subserved by such a body. It is the quiet, persistent investigation, coupled with the vast visatorial powers conferred upon the grand jury, the secrecy of its deliberations and the full protection given its members, that enables it to become, in truth, the protecting shield of the public interest. The fact that such a body may be called into existence by law at stated periods, of itself has a tendency

to stimulate an upright and conscientious administration of public affairs.

It would be better if it were provided by law that a grand jury should be impannelled in each county at least once in every two years, upon the expiration of the terms of county officers. In the County of Salt Lake there has been but one grand jury since the state was admitted into the Union, covering a period of seven years. A petitio has been presented to the Judges by some of the citizens of the county, requesting that a grand jury be summoned. and the Judges have requested the petitioners practically to show cause why their petition should be granted. Here, then, is a collateral inquiry, in the opinions of the Judges made necessary, owing to the condition of the present law. How is such an inquiry to be satisfactorily determined? Individual citizens, like the Judges, have no definite means of knowledge concerning the necessity for the impanuelling of the grand jury. The knowledge of both citizen and Judge in such matters, is derived from what is seen in the public press and rumors heard upon the street. spirit of unrest and dissatisfaction in relation to the administration of public affairs may pervade the entire community, yet no member thereof be able to lay his finger upon the evidence necessary to convince the judicial mind of a public necessity existing for the intervention of a grand jury. Such a situation ought not to exist. Individual citizens ought not to be compelled to put in motion the machinery of the law, designed for the safe-gaurding of the public interest.

What has been said in reference to the County of Salt Lake is, in a larger degree, applicable to other counties in the state which are members of large judicial districts, to some of which the judicial officers come but once or twice a year. How can a Judge in one of the large judicial districts of our state, possibly keep in touch with the

public sentiment and necessities of the people in all of the counties in his district?

These observations are made here for the purpose of considering the question concerned abstractly, and not at all in reference to the actual existing conditions in this county, or elsewhere. I do not intimate that there has been or is any maladministration of public affairs in the county or state. I have no knowledge in the premises. It is probably true that the great body of citizens are in a similar state of ignorance. But the very fact that the public is ignorant of the conditions of the public offices and of the administration of public business, stimulates the public mind to inquiry. I would strike from the constitution the prohibition against the impannelling of a grand jury, except in the discretion of the Judge, as a matter of unnecessary legislation out of place in the organic law, and would commit the matter to the legislature. The people should be free to act through their representatives, and to provide, if they so desire, for supervision of all public offices at stated periods fixed by law.

At the last meeting of the Association a new by-law was adopted, known as number three, which creates a standing committee consisting of the President and four members to be annually appointed by him, "whose duties shall be to report to the annual meetings important amendments, revisions or additions to the law of the state, as developed in legislation or by judicial decision, together with such suggestions as may seem to be necessary." The duty thus defined for this committee is of paramount importance to the accomplishment by the Association of beneficial results. It cannot be doubted that the results of conscientious work by such a committee might prove to be of permanent benefit to not only the Association, but to the legislature as well. The tendency everywhere is towards a uniformity of legislation in the different states

upon all matters of general interest and application, and a consequent uniformity, as far as possible, in the trend of judicial decision in the various jurisdictions. The effort of the future is to be directed toward a simplification as well as the unification of the law, to the end that like causes may produce like results in all the states.

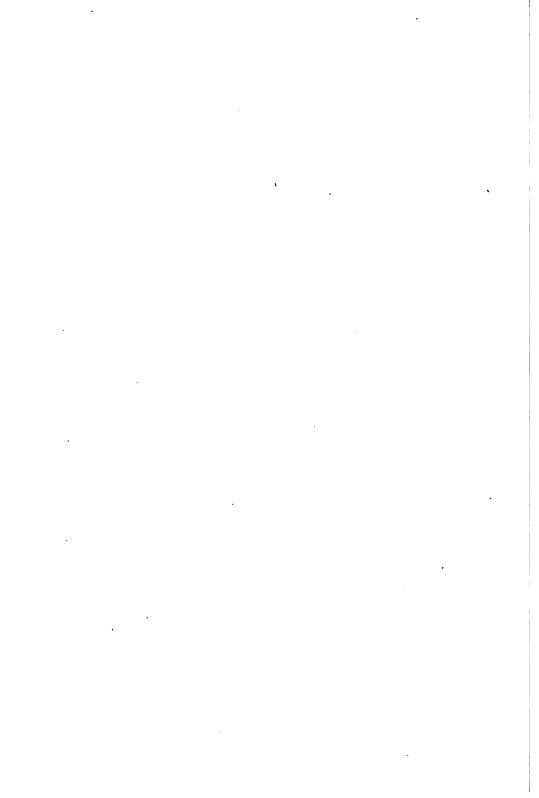
In the present state of our jurisprudence, because of varying judicial views, induced in part perhaps by local policies and legislation, conflicting adjudications of the law are made upon the same facts by the courts of the different states, and indeed by the state and federal courts in the same community. The citizens of another state may obtain relief upon a cause of action against a citizen of the State of Utah in the federal court, which in the courts of the state would be denied him. Apparently, this is a giving of the one law to one citizen of the common country, and another law to another citizen, dependent upon the forum of the tribunal deciding the case. Yet, it is a logical and imperative result flowing from the necessity of maintaining a proper line of demarkation between the state and federal sovereignties. The difficulty may be and probably in the future will be, minimized, if not entirely overcome by a uniformity of legislation, federal and state, in so writing the law relating to matters of common and general interest, as to apply it equally to all litigants in each jurisdiction.

Here we have one of the most important questions for the consideration of bar associations, and the committee contemplated by your by-law can prove to be a very efficient aid to the association in this very matter. So, as to all other questions of amendment or addition to our laws. The entire subject demands patient examination and reflection, and cannot be disposed of in a hasty or perfunctory way. This can best be afforded by a committee during the intermission of the annual meetings. But, I may be permitted to remind you, that the best thought only can be produced by a painstaking consideration and full discussion of the report and recommendation of the committee. Time should be taken at each annual meeting to fairly and fully discuss the live questions germane to the purposes of our organization. I recommend, however, that the President be not continued as a member of this committee. When a proper system of exchanges with the several state associations shall be provided for, your President will have a burden of official duty in the consideration and preparation of his annual address, which, with the other duties of his office, will be sufficiently onerous to justify his exemption from the laborious and exacting duties of this committee.

There is much, indeed, for this Association to do along the lines drawn by its constitution, and I confidently lool forward to the day when the fruition of our hopes and purposes shall be fully realized. Will you not give your best effort toward such a consummation?

And, now, gentlemen of the Association, I am reminded that, in concluding this address I am also saving farewell as your President. For six years I have occupied the chair as your presiding officer, and during all that time you have, one and all, extended to me a courtesy and confidence which can never be forgotten. Let us go on with the work of the Association in a fraternal spirit of trust and confidence in each other. Animated by the hope of establishing an influence which shall tend to aid the judges and the profession in the administration of justice. we may be assured that strong and earnest effort cannot fail of desired results. We may not forget, that in the endeavor of each individual member lies the real strength of the Association. Results must depend largely upon the constancy of purpose maintained by each of us. ask that you weary not in well doing, for

> "Whoever fights, whoever falls, Justice conquers evermore."



CONSTITUTION AND BY - LAWS OF THE

STATE BAR ASSOCIATION OF UTAH.

CONSTITUTION.

ARTICLE I. The name of the Association shall be The State Bar Association of Utah.

ART. II. The object of the Association shall be the elevation of the standard of professional learning and integrity; to inspire the greatest degree of respect for the efforts and influence of the Bar in the administration of justice; and to cultivate fraternal relations among its members.

ART. III. The officers of the Association shall be a President, a Vice-President from each Judicial District, Secretary, Treasurer, an Executive Council of five members, and a Committee on Grievances consisting of three members, which officers shall be elected annually and hold until successors are elected and accept.

ART. IV. The President shall deliver an address at each regular annual meeting of the Association, and the duties of the President, Vice-President, Secretary and Treasurer shall be such as usually pertain to those officer respectively.

ART. V. Regular meetings of the Association shall be annually held at Salt Lake City on the second Monday in January, at 7:30 p. m., at the Supreme Court Room, for

the election of officers, and for addresses and discussions; also for the transaction of any other business of the Association. The President and the members of the Executive Council and Committee on Grievances shall be elected at the annual meeting by ballot.

Special meetings may be called at any time by the Executive Council or the President, and must be called when a request signed by fifteen members of the Association is made therefor. And the notice of such special meeting shall be by publication in the daily papers of Salt Lake City, Ogden and Provo, or by personal notice sent by the Secretary to each member of the Association; in either case not less than three days' notice of the time and place of holding such meeting shall be given.

ART. VI. A quorum for the transaction of business shall be twenty members.

ART. VII. No person shall be admitted to membership in this Association, who is not a member of the Bar of the Supreme Court of Utah.

ART. VIII. All applications for membership at the annual meeting shall be referred to the Executive Council, who shall report on the same to the Association, with thei recommendation, and no person shall be admitted to membership except by a two-thirds vote of the members present. During the interval between annual meetings, applications for membership may be determined by the Executive Council. Each member shall pay an admission fee of \$5.00, and annual dues, after the first year, of \$3.00. Any member may be expelled on a vote of a majority of the members of the Association.

ART. IX. The Executive Council shall manage the affairs of the Association, subject to the Constitution and By-Laws; it shall, also, on or before the first day of May of each year, designate such number of members, not ex-

ceeding six, to prepare and deliver or read, at the next annual meeting thereafter, appropriate addresses or papers upon subjects chosen and assigned by the Council, to each of such members as may be so selected for such purpose.

ART. X. All addresses delivered and papers read before the Association, a copy of which is furnished by the author, shall be lodged with the Secretary. The annual address of the President, the reports of committees and all proceedings of the annual meeting shall be printed; but no other address delivered or paper read shall be printed except by order of the Executive Council.

ART. XI. The Committee on Grievances shall be charged with the investigation of all complaints against members of the Association, members of the Bar and officers of the Courts, and also of all complaints which may be made to them in matters affecting the members of the legal profession, the practice of law and the administration of justice, and shall report thereon to the Association, with such recommendations as they may deem proper. The proceedings of such committee shall be secret.

ART XII. If a vacancy occurs in the office of President, the Executive Council may designate a Vice-President to fill his place. Said Council shall also fill any vacancy that may occur in the office of Secretary or Treasurer, and said Council and said Committee on Grievances may respectively fill any any vacancy that may occur therein.

ART. XIII. The Treasurer shall render an account annually to the Executive Council, and said Council shall report the same to the Association at its annual meeting.

ART. XIV. The Executive Council shall cause to be printed such number of the Constitution and Bv-Laws of the Association, with the roll of the members of the Asso-

ciation, as it shall deem best, not exceeding one thousand copies, and shall distribute the same to members of the Association, and to such other persons or associations, or societies as it may deem prudent; and shall, with the proceedings of each annual meeting, print a roll of the members of the Association.

ART. XV. This Constitution shall remain unalterable except by a vote of two-thirds of all members.

BY - LAWS.

SECTION I. The order of business at each annual meeting shall be as follows:

- 1. Opening address by President.
- 2. Report of Executive Council.
- 3. Consideration of applications for membership.
- 4. Report of Committee on Grievances.
- 5. Report of standing and special committees.
- 6. Delivering or reading of addresses and papers.
- 7. Miscellaneous business.
- 8. Election of officers.

SEC. II. There shall be appointed by the President and Executive Council each year, three members as delegates to the American Bar Association for that year.

SEC. III. There shall be a standing committee to consist of the President and four members, appointed by him at each annual meeting, on the "State of the Law,"

whose duty shall be to report at the annual meeting important amendments, revisions or additions to the law of the State, as developed in legislation or by judicial decisions, together with such suggestions as may seem to be necessary.

- SEC. IV. There shall be a standing committee of ten, appointed annually by the President and Executive Council, on "Judicial Candidates and Nominations," whose luty shall be to investigate and report at the annual or special meetings of the Association, upon the qualifications and fitness of the condidates for judicial offices, other than those of Justice of the Peace.
- SEC. V. These By-Laws may be amended at any regular meeting by a majority vote of the members present.

REGULAR MEMBERS

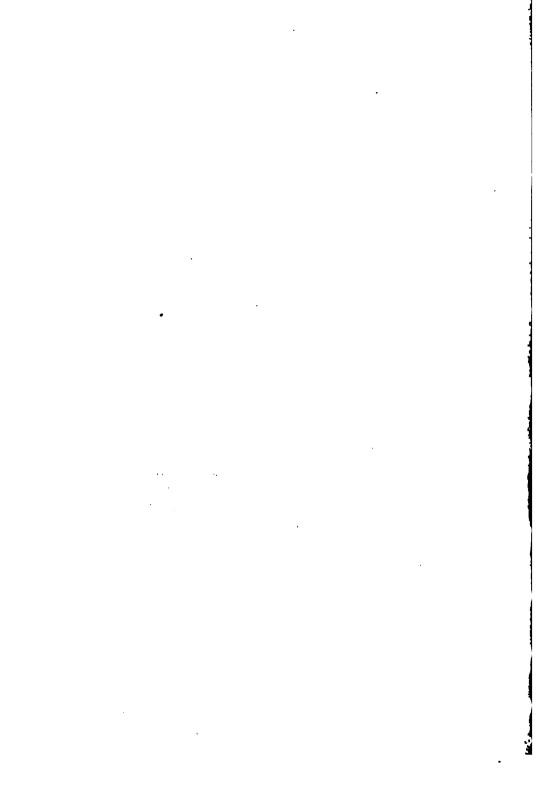
OF THE

STATE BAR ASSOCIATION OF UTAH.

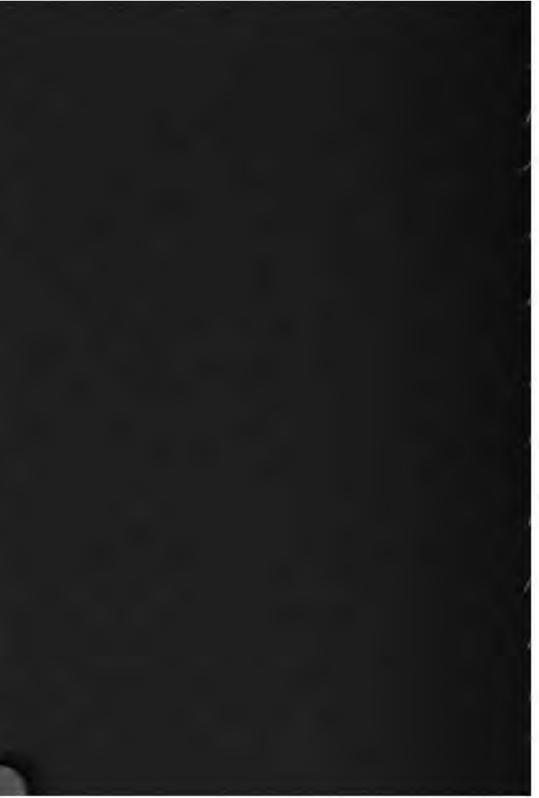
Allison, E. M., Jr Salt Lake City	Moyle, Oscar WSalt Lake City
Armstrong, George GSalt Lake City	Nye, George LSalt Lake City
Backman, G. HSalt Lake City	Pearson, C. E Salt Lake City
Baldwin, Charles Salt Lake City	Pierce, Frank Salt Lake City
Barrette, Wm. J Salt Lake City	Richards, F. S Salt Lake City
Bennett, C. WSalt Lake City	Richards, Jos. T Salt Lake City
Booth, H. ESalt Lake City	Ritchie, Morris LSalt Lake City
Bradley, Wm. M Salt Lake City	Royle, J. C Salt Lake City
Browne, T. EllisSalt Lake City	Sanford, Allen T Salt Lake City
Buys. William Heber City	Shields, Henry Park City
Critchlow, E. BSalt Lake City	Smith, Geo. H Salt Lake City
Daly, P. JSalt Lake City	Smith, Grant H Salt Lake City
Eichnor, Dennis C Salt lake City	Snyder, W. ISalt Lake City
Gibson, Geo. Jay Salt Lake City	Sommer, Morris Salt Lake City
Henderson, H. H Ogden	Stephens, Frank B Salt Lake City
Henderson H. P Salt Lake City	Sullivan, Geo. M Salt Lake City
Houtz, D. DProvo	Sutherland, George Salt Lake City
Howat. Andrew Salt Lake City	Sweet, F. A Salt Lake City
Hurd, J. H Salt Lake City	Tanner, H. S Salt Lake City
Hutchison, W. R Salt Lake City	Tanner, Nathan, JrOgden
Jack, C. BSalt Lake City	Thomas, Mathonihah Salt Lake City
Jones, B. HBrigham City	Thompson, J. Walcott Salt Lake City
Jones, Elmer B Salt Lake City	Van Cott, Waldemar Salt Lake City
Kaighn, M. M Salt Lake City	Varian, Charles S Salt Lake City
Kinney, Clesson S Salt Lake City	Walters, J. CLogan
Lee. E. O Salt Lake City	Warner, M. M
lee, William ASalt Lake City	Whittaker, J. J Salt Lake City
letcher, J. R Salt Lake City	Whittemore, C. O Salt Lake City
Lewis. Eugene Salt Lake City	Willey, D. O. JrSalt Lake City
Lewis, T. D Salt Lake City	Williams, P. LSalt Lake City
McCrea, Wm. M Salt Lake City	Witcher, A. B Salt Lake City
McDowell, Samuel Salt Lake City	Young, Le GrandSalt Lake City
Marshall, Thomas Salt Lake City	Young, Richard W Salt Lake City
Moyle, James H Salt Lake City	Zane, C. S Salt Lake City
•	

HONORARY MEMBERS.

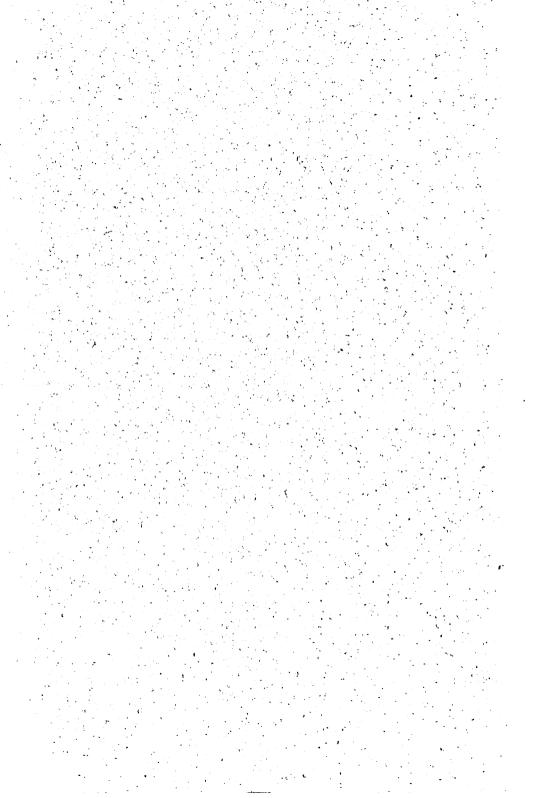
Hon. R. N. Baskin Salt Lake City	Hon, S. W. StewartSalt Lake City
Hon. George W. Bartch. Salt Lake City	Hon, Charles W. Morse. Salt Lake City
Hon. Wm. M. McCarty. Salt Lake City	Hon. John E. BoothProvo
Hon. John A. Marshall. Salt Lake City	Hon. Thomas MarioneauxNephi
Hon, Charles H. HartLogan	Hon. J. F. ChidesterPanguitch
Hon. Henry H. RolappOgden	Hon. Jacob JohnsonSpring City
Hon. W. C. Hall Salt Lake City	







REPORT of EIGHTH ANNUAL MEETING of the STATE BAR ASSOCIATION of UTAH. Held at Salt Lake Gity, January 9, 1905.



REPORT of *EIGHTH ANNUAL MEETING of the STATE BAR ASSOCIATION of UTAH. Held at Salt Lake City, January 9, 1905.

^{*}Note—No annual meeting was held in 1899, 1900, 1901, and 1904.



OFFICERS

of the

AMERICAN BAR ASSOCIATION 1905-1906

President,
George R. Peck, Chicago, Ill.

Secretary,
John Hinkley, 215 N. Charles St., Baltimore, Md.

Treasurer,
Frederick E. Wadhams, 37 Tweddle Bldg., Albany, N. Y.

Vice-President for Utah,
P. L. Williams, Salt Lake City.

Member of General Council for Utah, Charles S. Varian, Salt Lake City.

Local Council,

Edward B. Critchlow, Salt Lake City.

FORMER PRESIDENTS

1894-5-6
J. G. Sutherland

1896-7
Jacob S. Boreman.

1897-8-9-1900-1-2-3 **C. S. Varian**

1903-4-5
Andrew Howat

FORMER SECRETARIES

1894-5-6

Richard B. Shepard

1896-7-8-9-1900-1-2-3

Clesson S. Kinney

1903-4-5

J. Walcott Thompson

FORMER TREASURERS

1894-5-6

Elmer B. Jones

1896-7-8

E. O. Lee

1898-9-1900-1-2-3-4-5 George L. Nye

OFFICERS AND STANDING COMMITTEES

1905-6

President

P. L. Williams

Vice-Presidents

Judges of the District Courts

Secretary

J. Walcott Thompson

Treasurer

George L. Nye¹

George J. Gibson²

^{1.} Resigned February 18, 1906.

^{2.} Appointed by Executive Council vice Nye, resigned, February 18, 1905.

EXECUTIVE COUNCIL

Charles Baldwin, Chairman, of Salt Lake City
Allen T. Sanford of Salt Lake City
Geo. H. Smith of Salt Lake City
H. H. Henderson of Ogden
D. D. Houtz of Provo

COMMITTEE ON GRIEVANCES

W. I. Snyder, Chairman, of Salt Lake City
Grant H. Smith of Salt Lake City
J. H. Hurd of Salt Lake City

COMMITTEE ON THE STATE OF THE LAW

P. L. Williams, Chairman, of Salt Lake City Geo. Jay Gibson of Salt Lake City

ANNUAL MEETING

The regular annual meeting of the Utah State Bar Association was held in the Federal Court Room, Dooly Block, Salt Lake City, Utah, on Monday evening, January 9th, 1905.

A quorum being present President Howat called the meeting to order at eight o'clock.

The President's address was then delivered by Judge Andrew Howat.

The following named applicants having been reported favorably by the Executive Council, were duly elected members of the Association.

Messrs.	James IngebretsenSalt	Lake	City
	Dana T. SmithSalt	Lake	City
	Ray Van CottSalt	Lake	City
	W. D. RiterSalt	Lake	City
	Robert E. PorterSalt	Lake	City
	Russel G. SchulderSalt	Lake	City
	P. P. ChristensenSalt	Lake	City
	Geo. N. LawrenceSalt	Lake	City
	Samuel RussellSalt	Lake	City
	Brigham CleggSalt	Lake	City

- Mr. P. L. Williams then made a verbal report as Chairman of the Committee on Grievances.
- Mr. R. W. Young, Chairman of the special Committee appointed to bring charges against R. H. Jones of Brigham, reported progress.

Messrs. Baldwin and Williams discussed the method of meeting expenses incurred in presenting complaints against members of the Bar to the Supreme Court.

It was voted that the Association pay the preliminary expenses of the special proceedings against R. H. Jones and that a committee of three be appointed by the President to present the matter to the Legislature now in session and attempt to secure an appropriation to meet the expenses of such proceedings properly chargeable to the State, such as compensation of the referee appointed by the Supreme Court, the witnesses before him and stenographer's fees.

The President appointed to act as such Committee of three Messrs. W. I. Snyder, M. M. Kaighn and W. J. Barrette.

The report of the special Committee on Banquet was then read to the Association as follows:

"State Bar Association:

"As treasurer of the Banquet Committee I submit the following financial statement:

Tickets sold, 70 at \$2.50 each	\$175.00
Expenses—	
Commercial Club, 59 plates at \$1.75\$103.25	
Wines and cigars 31.45	
Printing notices 3.00	
Janitor 2.00	
Music 3.00	
Cash on hand 31.55	
\$175.00	

"Respectfully submitted,
"ALLEN T. SANFORD."

It was voted that the report of the Banquet Committee be received, adopted and filed, and that the balance on hand as appears from said report be turned over to the Treasurer of the Association.

The report of the Treasurer was then read, approved, adopted and ordered filed.

\$212.77

"Salt Lake City, Utah, Jan. 5, 1905.

"To the Officers and Members of the State Bar Association of Utah.

"Gentlemen:—As Treasurer of the State Bar Association, I have the honor to submit the following statement of receipts and disbursements. Owing to the fact that no meeting has been held since January 12th, 1903, my report includes a period of two years, instead of one.

"Very respectfully,

"GEORGE L. NYE, Treasurer."

Receipts-

Jan. 12, 1903, Balance on hand last report\$1 Feb. 16, 1903, R. W. Young, dues to 1903 Feb. 16, 1903, Wm. McCrea, entrance fee and dues	137.57 3.00
for 1903	5.00
Oct, 7, 1904, Cash from J. Walcott Thompson, Sec-	
retary	67.20
	212.77
Disbursements—	
January, 1903, Grocer Printing Company\$	68.70
Feb. 18, 1903, Daily Reporter Co. (stationery)	28.00
Feb. 19, 1903, W. B. Jack (janitor service)	2.00
Aug. 10, 1904, Chas. Baldwin (Committee expense	
in re R. H. Jones disbarment)	38.70
Cash on hand	75.37

The Secretary then read his report, which was adopted and ordered filed.

"Salt Lake City, Utah, January 9, 1905.

"To the State Bar Association of Utah:

"Your Secretary respectfully reports the following receipts and disbursements for the period commencing February 15, 1903, and ending with this date. Checks with endorsements accompany this report as vouchers for the expenditures:

Admission Fees-

Feb. 16, 1903, William M. McCrea March 3, 1903, H. S. Tanner March 4, 1903, T. D. Lewis March 4, 1903, Morris Sommer	\$5.00 5.00 5.00 5.00
Dues-	
Feb. 15, 1903, Richard W. Young (1902 dues)	3.00
March 3, 1903, P. L. Williams	3.00
March 3, 1903, Wm. M. Bradley	3.00
March 3, 1903, C. W. Bennett	3.00
March 3, 1903, J. C. Royle	3.00
March 3, 1903, Jas. T. Richards	3.00
March 3, 1903, C. E. Pearson	3.00
March 4,1903, Geo. L. Nye	3.00
March 4, 1903, Waldemar Van Cott	3.00
March 4, 1903, Mathonihah Thomas	3.00
March 4, 1903, W. J. Barrette	3.00
March 4,1903, E. M. Allison, Jr	3.00
March 5, 1903, Samuel McDowell	3.00
March 7, 1903, F. S. Richards	3.00
March 11, 1903, Henry Shields	3.00
March 12, 1903, Geo. Jay Gibson	3.00
March 14, 1903, Geo. Sutherland	3.00
March 19, 1903, R. W. Young	3.00
	3.00
March 21, 1903, Frank Pierce	5.00

STATE BAR ASSOCIATION	15
March 23, 1903, O. W. Moyle	3.00
March 30, 1903, E. B. Critchlow	3.00
April 25, 1903, W. I. Snyder	3.00
April 27, 1903, Geo. H. Smith	3.00
April 27, 1903, Elmer B. Jones	3.00
April 28, 1903, J. R. Letcher	3.00
May 14, 1903, Le Grand Young	3.00
May 6, 1903, J. C. Walters	3.00
May 7, 1903, W. R. Hutchinson	3.00
June 6, 1903, G. B. Jack	3.00
Nov. 14, E. H. Bachman	3.00
Nov. 14, 1903, F. A. Sweet	3.00
Nov. 16, 1903, A. Howat	3.00
Nov. 16, 1903, C. S. Varian	3.00
Nov. 20, 1903, Wm. A. Lee	3.00
March 4, 1904, Chas. Baldwin	3.00
March 27, 1903, H. P. Henderson	3.00
Total receipts\$	128.00
Disbursements—	
Feb. 16, 1903, Transmitted to Assn. Treasurer\$	3.00
Feb. 17, 1903, Transmitted to Assn. Treasurer	5.00
March 3, 1903, Pembroke Stationery Co., Letter	
Files	1.50
April 22, 1903, Harper Bros., printing notices	1.50
May 19,1903, To W. B. Jack, janitor services	2.00
Dec. 21, 1903, Harper Bros., printing Annual Re-	
port	38.50
Dec. 22, 1903, Postage for mailing Annual Reports	2.00
May 23, 1904, Tribune Pub. Co., notice	1.70
May 23, Herald Pub. Co., notice	3.60
Oct. 6, 1904, Postage	2.00
Oct. 6, 1904, Bal. on hand transmitted to Treasurer	67.20
Total disbursements\$1	28.00

"Twenty-six members are now delinquent for dues of 1903.

"No attempt was made to collect the dues for 1904.

"Three members of the Association have died since the last meeting of the Association, namely: D. H. Wells, Jr., Dennis C. Eichnor and Morris Sommer.

"J. WALCOTT THOMPSON, Secretary."

Major R. W. Young then delivered an instructive address on the subject: "The Philippine Penal Code."

Mr. Geo. H. Smith then read a paper entitled "Some Needed Legislative Corrections."

It was voted to refer Mr. Smith's paper, "Some Needed Legislative Corrections," to the Committee on the State of the Law.

It was voted that the Committee on Banquet appointed by the President at the last meeting of the Association be continued with power to act.

It was then voted that the Secretary be instructed not to collect the dues for 1904, for which year no meeting was held.

The following memorials were then passed unanimously by the Association and copies thereof directed to be sent to the bereaved families:

"D. H. Wells, Jr., Died March 12, 1903.

"WHEREAS, It has pleased Almighty God to take D. H. Wells, Jr., an active member of the State Bar Association of Utah at the beginning of a most promising career,

"RESOLVED, That we hereby express our appreciation of his integrity and loftiness of purpose, his high standard of honor and duty, his unremitting zeal in the noblest and highest ideals of life, his loyalty to and service for his country and his devotion to the best interests of the legal profession, deeply deploring our loss as members of this Association, we extend to those most sadly bereaved our heartfelt sympathy and place this memorial on the records of the Association.

"UTAH STATE BAR ASSOCIATION."

"Morris Sommer, Died November 13, 1904.

"WHEREAS, It has seemed best to an all-wise Providence to remove from the activities of life, Morris Sommer, an active member of the Utah State Bar Association, be it

"RESOLVED, That this Association hereby express its deep sense of loss in the death of a loyal member and directs this resolution spread upon its minutes and a copy thereof sent to the bereaved wife.

"UTAH STATE BAR ASSOCIATION."

"Dennis C. Eichnor, Died April 8, 1904.

"Inasmuch as it has pleased Almighty God in His wise providence to take from us by death a member of this Association: the Utah State Bar Association, in testimony of his ability, integrity and genuine capacity for friendship and service, desires to place this token of respect on its records and directs that a copy of this memorial be sent to the bereaved family.

"UTAH STATE BAR ASSOCIATION."

The regular annual election of officers was then taken up and the following members were duly elected officers for the ensuing year:

PresidentP. L. Williams

Vice-presidents:

Executive Council—Messrs. Charles Baldwin, Chairman; Allen T. Sanford, Geo. H. Smith, all of Salt Lake City; H. H. Henderson of Ogden, and D. D. Houtz of Provo.

Committee on Grievances—Messrs. W. I. Snyder, Chairman; J. H. Hurd and Grant H. Smith.

On motion unanimously passed Justice D. N. Straup of the Supreme Court and the Judges of the respective District Courts were elected to Honorary Membership in the Association.

A vote of thanks was then extended to the retiring officers in appreciation of their loyal and untiring efforts in the interests of the Association.

The meeting then adjourned without day.

J. WALCOTT THOMPSON, Secretary.

PRESIDENT'S ADDRESS

Gentlemen of the Bar Association:

It occurs to me that the attitude of the people towards the law and its administration is a subject of especial interest to the members of our profession. What the law is, as declared by the statute, is a matter of importance, but not of so much importance as whether the law is effectively enforced, and the attitude of the people towards the law and the courts charged with its administration.

I recognize that there prevails to some extent the opinion that the interest, if not the duty of the lawyer, is not to seek the enforcement of the law, but to defeat the law; in civil actions to endeavor to enforce unjust claims or to defeat honest demands on behalf of his client; in criminal prosecutions to baffle the law and defeat the ends of justice.

Whatever reasons may occasionally be afforded for such an accusation, I believe that lawyers as a rule are loyal to the law and jealous of the standing and good name of the courts, whose officers they are. This belief is my reason for saying to you what I shall this evening.

There is a conviction among people who give the matter consideration that one of the dangers threatening the welfare of our country is the growing disregard of law by the individual whose duty it is to yield obedience, and the increasing failure to enforce the law on the part of those charged with the duty of bringing to justice persons who disregard their duty and violate the law. This question has occupied more or less attention for years. At first there was but a voice raised here and there, calling

attention to the increase of crime and the inability of courts of justice as organized and administered to successfully deal with the question. The people, so busy with their own affairs, gave little heed to the warning that might be likened to the "voice of one crying in the wilderness," so little attention was given to what was regarded as the outcry of the pessimist. But while these warnings appear to have passed unheeded, yet they doubtless had an influence in awakening the interest of the more thoughtful, and of late a great deal of attention is being given, by writers upon public questions, to the subject. Attention has been called by these writers to the growing disregard of the law, the growing want of respect of the people for courts that administer it and the existing and continually increasing failure, on the part of the constituted authorities to deal with the question and to bring offenders to iustice. A number of reasons have been given for such conditions, and a number of ways pointed out to bring about the needed reforms. All agree, however, in deploring the existence of a great indifference, not only on the part of those upon whom the duty has been imposed to administer the law, but on the part of the people in general, and it has been sought to awaken the public conscience to the danger of the situation and to arouse public sentiment so that it will demand that the laws shall receive some respect and obedience, and that at least open and flagrant violation of the law shall be punished.

This increase of crime, this disregard of lawful restraint, has been most noticeable in cases of personal violence, homicides and serious assaults, and the frequency of these, and the inadequacy of the courts as administered to deal with them, has formed the excuse for, if not the promoting cause of, the form of lawlessness known as

lynching, and other arbitrary and unlawful forms of punishment for crime which are prevalent in different parts of the country; a form of lawlessness which provokes still more lawlessness, and is a proclamation of the failure of organized government to administer the law.

To the inquiry as to the cause of this stae of affairs the following answer was recently given: "Nobody respects the law—nobody respects the courts—the courts do not respect themselves."

We do not need to travel to learn that the people do not respect the law. Legislatures enact laws and city councils pass ordinances, but many of them are utterly disregarded, some of them defied. Open violations of them occur every day and the violators are unmolested. Some of our statutes and ordinances appear to have been passed to please a portion of the people, and remain unenforced to please the other portion. The law in many cases is neither respected nor feared. The violators do not willingly yield obedience, nor do the authorities enforce the law by inflicting punishment upon the violators.

This condition of affairs may be overcome in time if other conditions are favorable. But if it is true that the people do not respect the courts and that the courts do not respect themselves, there is little hope for much improvement while that unfortunate condition of affairs exists, and a natural inquiry is, are there any reasons why the people do not respect the courts, and the courts do not respect themselves? A full answer to this inquiry would occupy more time than I can devote to it in this paper. So I shall only touch upon one feature of this matter, but one that I consider as greatly tending to cause the people to lose respect for the courts, and one that must cause the courts to lose respect for themselves and the judges

thereof to lose respect for the courts over which they preside. I think that it will be admitted by all right thinking persons, that respect for the courts, respect for, and confidence in, the judgments of the courts are essential to the well being of organized society. Whatever tends to lessen the respect of the people for the courts, whatever tends to impair that confidence in the judgments of the courts, which is so essential to their efficiency as the safeguards of our persons and our property, must be detrimental to public welfare, and tend gradually to distrust of the administration of the law. If I criticise and condemn certain things that, in my judgment, tend in that direction, it is not because of any desire to assail any individual or individuals. Things, I take it, in that regard are in Utah quite similar to what they are in some other states. What I shall criticise and condemn is a system that has grown up till it apparently has become a very prominent part of the machinery in the administration of the criminal law, but which I believe to be altogether detrimental to the public welfare, as administered.

As in other states, we have courts organized for the administration of the criminal law, with judges to hold level the scales of justice, and prosecuting attorneys to represent the State. The law, in its care to give every person accused of crime a full opportunity to defend against the accusation, places at the disposal of the court the revenues of the state, so that if the defendant is unable to meet them himself, the state pays the expenses of his witnesses and brings them in by its officers at the expense of the state. Every opporunity is given the prosecution and the defense to disclose before the jury all the facts reflecting upon the guilt or innocence of the defendant. The rules of evidence that long experience has

shown to be necessary to confine the inquiry to the question in issue and protect the defendant from being prejudiced by extraneous matters, such as his bad reputation, or other criminal acts, are enforced. If the defendant is convicted, the state still extends to him her liberality and assists him in an appeal to the Supreme Court of the State, and if the judgment is affirmed it remains a verity.

This adjudication of guilt and imposition of punishment should, except in very exceptional cases, be the end of the law. Yet we have what is known as a Board of Pardons, before whom the defendant may have a hearing. and who, disregarding the rules of law that have been thought necessary in the trials of issues of fact, for the elucidation of the truth, and the prevention of fraud and imposition, receive ex parte affidavits, often reciting altogether immaterial matters, and who permit persons desiring commutation of sentence, or pardon of the prisoner to solicit them to yield to their importunities, and who, upon such a showing set aside and nullify the judgments of the courts that have been given upon a full hearing according to the rules of law. In this state there have been a number of instances where a great length of time has been consumed by the trial court and trial jury in ascertaining the truth and determining the defendant's guilt, and in cases of murder in the first degree, to determine whether the penalty imposed shall be death or imprisonment for life, where the testimony has been voluminous and yet the judgment rendered after full consideration of all the testimony, has been set aside upon the flimsiest kind of evidence; in fact, no evidence according to the rules of law, much of it of such a character that it would not be received in a court of law even if the affiant were present, because of its immateriality and unreliability. One case I shall call attention to, as it is in many respects merely an example of other cases that have preceded. A murder was committed in an adjoining county: one Haworth was arrested for the offense and put upon trial charged with murder in the first degree. The trial of the case occupied, as I am informed, about five weeks of the time of the court and jury. The testimony was voluminous and when transcribed covered about 6000 pages of typewriting. The jury, upon the responsibility of their oaths and under instructions from the court, found the defendant guilty of murder in the first degree and deserving of death, and so did not recommend, as they might have done, that the prisoner be punished by imprisonment in the penitentiary for life. The accused was defended by able counsel and upon his conviction and sentence an appeal was taken to the Supreme Court of the State, where the judgment of the court below was affirmed. the court holding that the defendant had been fairly tried and justly condemned. Then an application was made by Haworth before the Board of Pardons. During the pendency and before the final hearing of the application, influence was brought to bear upon the Board of Pardons to commute the sentence of Haworth to imprisonment for life, and a day or two before the final hearing the following appeared in a prominent and influential newspaper of this city:

"Through the efforts of Senator Dolliver of Iowa, Senator Smoot has been induced to intercede in behalf of "Nick" Haworth, who is sentenced to be executed on Dec. 11th for the murder of Thomas Sandall at Layton, and he has telegraphed to Governor Wells, recommending that Haworth's sentence be commuted to life imprisonment.

"The telegram which was received yesterday from Senator Smoot is as follows:

"'I promised Senator Dolliver I would wire you today recommending a commutation of the sentence in the Haworth case to life imprisonment.'

"It was sent by Governor Wells to Attorney General Breeden, where it will be filed with the other papers in connection with Haworth's application and will be used at the meeting of the Board on next Saturday. With Senators Smoot and Kearns of Utah, and Senator Dolliver of Iowa interceding in his behalf, it is generally believed that Haworth's sentence will be commuted by the Board."

It will naturally occur to a lawyer or any person who gives the matter thought, to inquire 'Why should Senator Dolliver of Iowa persuade Senator Smoot and Senator Kearns to intercede with the Board of Pardons for a commutation of the sentence of Haworth, and why should Senators Kearns and Smoot presume to ask the Board of Pardons to grant commutation of sentence? It is not pretended that they read the record. It will not be thought that either Senator Kearns or Senator Smoot gave the matter consideration or had any fair understanding as to whether the verdict and the judgment of the court were supported by the evidence and justified by the aggravating circumstances connected with the murder. These were matters that had taken the court and jury five weeks to ascertain and determine, and vet Senator Kearns and Senator Smoot of Utah, merely to gratify the wish of a Senator from Iowa, asked the Board of Pardons of Utah to set aside the solemn judgment of twelve jurors, of the trial court, and of the Supreme Court of the State of Utah, and subordinate them to their desire to be complaisant and obliging to a brother Senator.

The jury that tried Haworth had a right to exercise their judgment as to whether the offense of which they found him guilty should be punished by imprisonment for They had similar authority in the life or by death. premises, that the Board of Pardons had after sentence of death had been imposed. Why so much circumlocution? If an appeal was to be made by three United States Senators, that the sentence imposed upon Haworth for his crime should be, not death, but imprisonment for life, why did they not make that appeal to the jury who in the first instance were called upon to determine that question? Why not, in a case where discretion is lodged in the judge of the trial court and not in the jury, have the appeal by men of position and influence made to the judge of the court instead of waiting to present it to the Board of Pardons? Such an appeal to the jury, or such an appeal to the court imposing punishment, would be a direct assault upon the integrity of the court in the administration of the law and would be resented as such. We are not yet prepared for that. We are not yet prepared to have people who are supposed to wield influence and who are willing to subvert the laws of the State to gratify their wishes appeal to the court or to the jury to do this, or to do that, as they may see fit to request. A juror who would listen to such an appeal would be punished as a wrong-doer, and no self-respecting judge would permit himself to be approached in that way. Yet these people go before the Board of Pardons with the request that they set aside the judgments of the courts, laboriously and carefully arrived at, and that have been approved and confirmed by the Appel-Is it any more dangerous that men should directly assail the courts of law and make their influence felt by the jurors and judges than it is to undermine the

administration of the law by using their influence to induce the Board of Pardon to set aside the final judgment of courts because it is their wish? If the rules of law prescribed by the statutes and adopted by the courts for the ascertainment of truth in judicial proceedings are not the proper methods by which to arrive at the guilt or innocence of a defendant and the measure of his punishment, and ex parte affidavits, hearsay evidence, and petitions, are the proper means of determining these questions, why should not our legislature prescribe and our courts adopt the latter as the proper rules by which courts shall ascertain and determine the guilt or innocence of persons accused of crime and the punishment that should be imposed therefor? Let the defendant come into court without any provision for any attorney representing the State, with ex parte affidavits where the affiants are not present and subjected to cross-examination, and present petitions that he be not adjudged guilty, or if adjudged guilty, that he be not punished. Would there be any convictions or any punishments? If that is not a safe and reliable method of ascertaining the guilt or innocence of the defendant, then why should it be adopted or permitted by the Board of Pardons, and the final judgments that are based upon the verdict of a jury upon a full hearing according to the rules of law be set aside and held as naught upon such a showing? It may be said however, that the Board of Pardons merely received the petition of these Senators as an act of courtesy and that they were not influenced in granting the commutation of sentence by the petitions of these persons. Granting that to be true, yet the mischief remains that an influential newspaper stated that it was generally believed that Haworth's sentence would be commuted by the Board, not because of any doubt of his guilt or of the justice of the judgment imposed by the jury

and the court, but because Senator Dolliver of Iowa and Senators Kearns and Smoot had requested the Board to commute it.

The people of the state were informed by this article that the wish of three United States Senators is sufficient with the Board of Pardons of Utah, to cause them to set aside the judgment of a court which had been sustained by the Supreme Court of the State, and to grant a person convicted and sentenced to death, a commutation of his sentence to imprisonment for life; that the law and the judgment of the courts must bow to their wishes and yield to their influence.

The fact that an individual who may have deserved the death sentence was granted imprisonment for life in lieu thereof was of itself a matter of little consequence. The great injury done was that the people were led to believe that influence was sufficient to induce the Board of Pardons to set aside the judgment of twelve jurors and of the trial court and of the Supreme Court of the State.

And the distressing feature of it is that many people believe that the statement made by the newspaper in question was true. The statement did not appear to excite any surprise, did not provoke any criticism, and no member of the Board of Pardons, so far as I know, resented the imputation contained in the statement. It was apparently considered entirely a proper thing for a United States Senator of Utah or of Iowa to lend himself to interfere with the execution of the judgment of the court, arrived at in the only way known to the law and to the constitution, and by the only method approved by experience for the ascertainment of truth in such cases. Nor is that the only instance where a newspaper has stated facts that passed unchallenged, indicating that some member of the Board of Pardons has been guilty of what I regard as an improper use of his position. It was stated in another newspaper of this state some time ago that in the matter of a petition before the Board of Pardons for the pardon of another man convicted of murder, a member of the Board of Pardons desired to have an interview with this person convicted of murder and confined in the penitentiary but that he was too busy to go out to the penitentiary to interview him and therefore he had directed that the prisoner be brought in to his chambers, where the interview could be had without the loss of so much time.

If a juror should undertake to have a private interview with a defendant on trial before passing upon his guilt or innocence, the wrath of the court would be visited upon him, and if the judge should do so, he should, and would be condemned for such an impropriety, and yet that a member of the Board of Pardons desired a private interview before acting upon the case of the person, was received apparently as a matter of course and the fact was stated as a matter of news without any adverse comment whatever.

Nor is the action of the Board of Pardons, upon ex parte affidavits and petitions, confined to commutation of sentences of death to imprisonment for life. On such a showing full pardon has been granted, usually preceded however, by a commutation of sentence.

These hearings are ex parte; there is no one designated by law to appear and protect the interests of the state. It is true that notice of the hearing is given and that any person may appear and protest or show cause why the petition should not be granted. But why should any one need to appear to maintain that the judgments of the courts should be respected by the Board of Pardons and to insist that they shall not be set aside upon ex parte

affidavits or the petition of the applicant and his friends. If proper consideration and respect were shown to the courts and their judgments, every presumption would be indulged in their favor and it would require very convincing proof to warrant their being set aside.

I have been informed that in the case of a man convicted of murder a good many years ago, and sentenced to imprisonment for life, a number of applications had been made by him for pardon; that the sister of his victim expended all of her slender means employing counsel to appear and resist the granting of pardon and that her efforts were successful. But that after she had spent her money and could no longer employ counsel the prisoner again applied for pardon and it was granted. Such a case is a sad commentary upon the administration of the law, and upon the interference with the judgments of the courts by our Board of Pardons.

I am not prepared to say that the pardoning power should be entirely abolished. The power may exist and be used with such respect for the law and its maintenance, and for the courts and their judgments, that its exercise will be beneficial in effect; but on the other hand, the power conferred may be exercised in a manner that does infinitely more harm than if the power to interfere with the judgments of courts were not granted at all.

Persons convicted of crime and in a desperate situation resort to desperate measures to prevent the execution of the judgments of the courts for their crimes. What they do or say, and whatever evidence they present should be viewed with great suspicion. The Board of Pardons should not lend ready ear to protestations or so-called proofs of innocence.

I do not understand that the giving of the power to pardon or commute sentences is the granting of a royal prerogative, and that a pardon for crime is a largess that may be bestowed at pleasure. The Board of Pardons should not be a city of refuge for murderers and other criminals, as it too frequently is. It should not be an instrument to interfere with the administration of the law, but should rather sustain the law and require convicted criminals to suffer the punishment imposed by the courts.

It may be said, and it may be true, that in many instances the action of the Board of Pardons in granting commutation of sentence or granting a pardon was upon the petition of a great number of people; that it had been advocated by the newspapers supposed to reflect public opinion, and that it was apparently the wish of a great many people that the commutation or pardon should be granted, that no objections were offered, and that the Board yielded to the popular desire in so doing. But courts, by whatever name they may be called, that administer the law or deal out justice, are not constituted to yield their judgments to the popular wish. It is their duty, which we have the right to expect them to discharge, to stand up and resist this popular clamor.

The people generally, including those who petition for pardons, are usually not informed, or are misinformed in regard to the facts bearing upon the guilt or innocence of persons convicted of crime, or what punishment the evidence shows should be inflicted.

They are often, in fact usually influenced by statements circulated by the prisoner and his friends.

The people at large, charged with no duty in regard to the matter except as private citizens, and misinformed in regard to the facts in the case, are today just as capricious and unstable as they were, when one day the multitude shouted "Hozanna to the Son of David!" and the next day cried out, "Away with him! crucify him! crucify him!" But we have the right to expect that men who are put in position where they have the power and authority to compel respect and obedience to the judgments of the courts or to nullify them and make of them naught, will not be influenced in their actions by the popular wish or even popular outcry, but on the contrary will stand up and do the right in spite of it.

This evil of granting pardons and commutation of sentences that have been imposed by courts after patient investigation, by the Board of Pardons is not merely sentimental; it bears fruit and it is not good fruit. illustration, some months ago a murder was committed in this city, and one, in the opinion of many, deserving of death as the punishment. Utah has not been disgraced by lynchings or other acts of mob violence. But when the man guilty of this murder was arrested, a crowd of the friends and acquaintances of the murdered men gathered and insisted upon lynching the murderer. When admonished to desist and let the law take its course, they said that if convicted the Board of Pardons would interfere and prevent the execution of the judgment of the court, and the response of the many was, "We can't blame them for thinking so."

Again we find that where the trial court has imposed a sentence of, say three years, upon a defendant convicted before him, and application is made for a pardon, say in one year or in eighteen months after sentence has been imposed, the judge imposing the sentence will recommend a pardon, saying that he believes that the ends of

justice have been fully met by the imprisonment that the person has undergone. If imprisonment for eighteen months satisfies the ends of justice, the court should not have imposed a greater sentence. And a judge who has imposed a sentence of, say three years, and at the end of a year or so, says to the Board of Pardons that imprisonment for one-half or one-third of the time satisfies the ends of justice, virtually says that he had imposed upon the offender an excessive punishment, a mistake that he wishes the Board of Pardons to correct.

Now it is possible that such a thing occurs as a trial court imposing too severe a sentence, and when that is true, it is commendable that he should say so and seek to remedy the wrong.

But I believe that it is not often that an excessive punishment is imposed, and that the court, with the facts developed at the trial fresh in his mind and a sense of duty pressing upon him, is in a better position to measure the offense and the punishment it deserves, than he is months or years afterwards, and that it is frequently true that this change of mind is because of his inability to preserve a judicial temperament for so long a time as the sentence imposed, and that he yields to importunity instead of remaining steadfast and justifying and vindicating his action as a judge. But whatever may prompt it, the act of the judge in stating that a much lighter sentence than the one he had imposed satisfies the ends of justice, must tend to undermine the confidence of the people in the judgments of the courts and lessen the respect to which courts and their judgments should be entitled.

And so this failure of the people to respect the courts, and this failure of the courts to respect themselves, are some of the evils that encourage crime and evils that breed discontent and anarchy among the people who believe that the law is not administered with a fair and impartial hand. The other day I saw in a newspaper that

a man convicted and sentenced to the penitentiary in another state had been pardoned by the Board of Pardons, and that it was brought about largely through the untiring efforts of his wife to secure the pardon for him. The wife should be commended for her devotion and her diligence, but a Board of Pardons that permits the devotion of a wife to divert their minds from the offense and grant a pardon on that account, fall short of doing their duty. If the offender had a devoted wife whose influence should have kept him from committing crime, he was a greater criminal than the man who committed a similar offense who had no such influence to keep him from going astray; yet the greater criminal received the greater consideration, and the other man remains in the penitentiary to serve out his sentence.

We have occasionally an apparent wakening of the public to a sense of the danger arising from the maladministration of our criminal law, which at times finds voice in our newspapers. But these efforts to create a public sentiment in favor of a more strict administration of the criminal law have been spasmodic and in the abstract, and usually directed against crime and criminals at a distance.

When the law should be enforced against individuals who are with us and of us, those voices that were calling aloud for the enforcement of the law are hushed. The law should be enforced, but not against our friends or acquaintances. The mischief cannot be remedied by such means. What is needed is a patient, persevering and persistent effort to bring about a different and more efficient administration of the criminal law, no matter whom it affects, and no matter how many people may desire to defeat it; and an insistence that the courts shall be respected and their judgments enforced; and the courts will not be respected if their judgments are continually or even frequently interfered with and set aside by the pardoning power.

The attitude of the members of our profession upon this question should not be in doubt. We should lend our influence to restore and maintain the respect of the people for the law and for the courts that administer it; we should insist that the judgments of the courts shall not be set aside, except for extraordinary reasons, and to that end we should cultivate public sentiment demanding that such shall be the case. To do this, however, is no easy matter. The people seem to be indifferent—they do not care; they feel that the matter is entrusted to a Board of Pardons, whose duty it is to maintain the law and sustain the courts.

Again, every criminal and every one on the border line, in the domain of doubtful transactions, are not so much interested in the fair and just administration of the criminal law, or in having confidence reposed in and respect shown to the courts, as they are in having a power above and beyond the courts that will grant private interviews, that will listen and give effect to ex parte affidavits, that it will hear without resentment that it will yield to the wish of some man of influence. And this increasing number of criminals, and their friends who love them better than they love the law, and all who sympathize with them or profit by them, will use every effort to prevent the curtailment of the power of the Board of Pardons, or a less lenient attitude on the part of the Board towards persons convicted of crime.

But our duty is plain, and the right will prevail over the wrong, if we all do our duty.

It is too much to expect that everybody will respect the law and respect the courts; but it is the duty of this Association and the duty of every member of our profestion, and of every good citizen, to labor to bring about a change from existing conditions, so that it shall no longer be said that "nobody respects the law—nobody respects the courts—the courts do not respect themselves."

PHILIPPINE PENAL CODE

By Richard W. Young.

This code, like all other Spanish codes, is remarkable for precision of language and definition. Although the American lawyer may differ with many of its provisions. he can but admire the beauty of its workmanship. It has many features that are worthy of more than a passing notice; but it is to its provisions limiting the discretion of the judge and respecting the application and nature of penalties that I desire chiefly to draw attention. The discretion of our judges extends, uncontrolled by statutory rule, between very broad limits; and we frequently find in our penal code such provisions, respecting penalties, as that a crime is punishable by imprisonment "not less than one nor more than ten years," "not exceeding five years," "a term which shall not be less than ten years and which may be for life," "not less than three years nor more than twenty years," "not less than one nor more than twenty years," etc., etc., while fines may be imposed which shall not exceed five thousand dollars or one thousand dollars, as the case may be, and in many cases the discretion of the court extends to both fine and imprisonment within equally broad limitations. It is not so under the Spanish system of jurisprudence—the discretion of the judge is narrowed by express statutory provisions within narrow limits. With us, it is supposed that the judge will impose sentence, having in view the extenuating and aggravating circumstances of the case, such circumstances remaining practically without statutory enumeration; with the Spannsh, however, all circumstances that may be considered in extenuation or aggravation of the offense are minutely

enumerated, and the judge, in the imposition of sentence, must set down in writing his findings of fact and conclusions of law, much as we do in equity cases, thus enabling a court of review to ascertain whether each circumstance of the case has been given due weight and the sentence made to fall within the precise and proper subdivision of the corresponding penalty. Under the latter system there is little opportunity for prejudice or favor to influence the sentence, and, possibly, too little opportunity for those important considerations which are incapable of definition to receive due weight. Whether unformity of punishment and certainty thereof, so far as the extent is concerned, should, in the interests of justice, give way to uncontrolled judicial discretion, is a matter upon which our own jurists and those of the continent have differed widely.

Before starting upon the elucidation of the subjects mentioned, it will be interesting to note that the Philippine Code provides that every person criminally liable for a crime or misdemeanor shall also be civilly liable, and that the criminal court is authorized to fix, according to its judgment, the amount for which the person condemned shall be liable; and the obligation to make restitution, to repair the damages or indemnify the losses, is transmitted to the heirs of the person liable.

In approaching the fixing of a sentence, the judge must bear in mind whether the culprit is a principal, an accomplice, or an accessory, and whether the crime was consummated, frustrated, or merely attempted. Should the crime committed differ from that which the culprit had intended to commit, sentence is to be imposed under the operation of a series of rules, whose character is indicated by the following, namely, that if the penalty prescribed for the consummated crime should be higher than

that corresponding to the crime intended, the penalty of the latter in its maximum degree shall be imposed. A frustrated crime is punishable by a penalty next lower in degree than that prescribed for the consummated crime. Accomplices in a consummated crime receive the penalty next lower in degree than that corresponding to the consummated crime, and accessories receive a penalty two degrees lower. And so, it is precisely stated by degrees how the punishment of principals, accomplices and accessories shall vary in consummated, frustrated and attempted crimes.

The judge must also take into consideration the extenuating or aggravating circumstances of the offense. The penalty provided by law is to be divided by the court, if the law itself shall not have divided it, into three equal parts, and the sentence shall be imposed under the following rules:

- 1. If neither aggravating nor extenuating circumstances have attended the deed, they shall impose the penalty prescribed by law in its medium degree.
- 2. If only an extenuating circumstance should have attended the deed, they shall impose the penalty in its minimum degree.
- 3. If only an aggravating circumstance should have attended the deed, they shall impose the penalty in its maximum degree.
- 4. If both extenuating and aggravating circumstances should have attneded the deed, they shall make a reasonable allowance in the designation of the penalty by counterbalancing the weight of the one with the other.
- 5. If two or more very marked extenuating circumstances and no aggravating circumstances should have attended the act, the court shall impose the penalty next

lower to that prescribed by the law in the degree that it considers proper, according to the number and importance of such circumstances.

- 6. Whatever may be the number and importance of the aggravating circumstances, the courts shall not impose a higher penalty than that prescribed by law, in its maximum degree.
- 7. Within the limits of each degree, the courts shall determine the extent of the penalty, in view of the number and importance of the aggravating and extenuating circumstances, and the greater or lesser extent of the evil produced by the crime.

From the rule last mentioned, it will be seen that a discretion of the court is limited to the limits of each degree. We shall see, as we proceed farther, what are the limits of this discretion. It may be mentioned that in the application of fines, the courts may go to the full limit within which the law permits their imposition, taking into consideration not only the aggravating and extenuating circumstances of the deed, but chiefly the wealth or means of the culprit. Let us next inquire what are the extenuating and aggravating circumstances to be taken into consideration by the court.

Extenuating circumstances are found when all the requisites necessary to exempt do not exist, or when the culprit is under eighteen, or when an offense is more grave than was intended, or when the party injured gave sufficient provocation or threat, or when committed in vindication of a grave offense to the culprit or his immediate family; or when committed in a state of intoxication, if not habitual or subsequent to the plan to commit the crime; or when the person has acted under such powerful

excitement as naturally produces a loss of reason or self-control; and, finally, under other circumstances analagous to the foregoing.

Circumstances which aggravate criminal liability are the following: 1. That the injured person is of the immediate family of the offender; 2, that the act was committed with treachery (treachery being defined to be the commission of a crime by employing means in the execution thereof tending to insure it without risk to the criminal from the defense of the injured party); 3, that it was committed in consideration of a price, reward or promise. or by means of inundation, fire, poison, explosion, as stranding of a vessel, derailment of a train, or other artifice involving great destruction; 5, that it was committed by means of printing, lithography, etc.; 6, that the wrong done is deliberately increased by other evils unnecessary to the execution of the crime; 7, that it is committed with premeditation; or 8, with craft, fraud or disguise; or 9, where advantage is taken of superior strength, or means employed to weaken the defense; or 10, when committed with abuse of confidence; or 11, by taking advantage of a public position; or 12, by adding ignominy to the natural effects of the act; or 13, when committed on the occasion of a fire or other calamity; or 14, with the assistance of armed persons, or of persons who insure or provide immunity; or 15, when committed at night, or in an uninhabited place, or by a gang; or 16, any attempt of or with insult to the public authorities; or 17, when the culprit has been previously punished for an equal or greater crime, or for two or more lighter crimes; or 18, of a crime included in the same title of the Code; or 19, when a crime is committed in a sacred place, or in a place where public authorities are engaged in their duties; or 20, with disregard for the respect due the person injured on account of his rank, age or sex, or in his dwelling, if without provocation; or 21, when the act is committed by entry in a way not provided for the purpose; or 22, by breaking through a wall, doors, etc.; or 23, when the culprit is a vagrant; or 24, by the use of arms prohibited by the regulations.

Then follows a somewhat remarkable provision to the effect that the circumstance that the culprit is a native, mestizo or Chinaman, shall be taken into consideration, for the purpose of increasing or reducing the penalty, within the discretion of the court. The application of this article appears to have led to the reduction of sentences in many cases for murder, theft, and other crimes habitual among the natives where both criminal and person offended were natives or Chinese, and to increase the penalty where a Spaniard, particularly a Spanish official, was the object of the crime.

Having in mind these elaborate rules with numerous exceptions and explanations which I have not paused to enumerate, the judge consults his statute to ascertain which, among the long list of penalties, is the one applicable to the offense committed. It will be interesting to ascertain the nature of the punishment imposed in Spanish-speaking countries.

The penalty of death is imposed by the garrote upon a scaffold and in a public place. The garrote causes death by the bringing of a bar in front of the neck close to a bar at the rear of the neck, thus severing the spinal cord; the operation is performed by the turning of a screw, and accomplishes in a comparatively humane manner that which is attempted, though too often with deplorable results, by hanging. Those sentenced to either perpetual or temporary "chains" are required to carry a chain at the

ankle hanging from the waist, and are employed in hard and painful labor in a public institution for the benefit of the state. Those condemned to reclusion are forced to labor for the benefit of the state within the precincts of the penal institution. Those sentenced to relegacion may devote themselves under the surveillance of the authorities to their profession or trade within the radius to which the limits of the penal institution extend. Expulsion from Spanish territories, either perpetual or temporary, may be imposed in certain cases. The punishment of "presidio" carries with it the necessity of forced labor, and the punishment of "prison" the privilege of engaging in such labor as the culprit may choose, subject to the discipline of the institution. In both of these cases the product of the labor of the condemned is devoted to meeting the civil liabilities arising from their crimes, to the indemnification of the prison for expenses and to the creation of a fund to be delivered to the culprit upon his discharge from prison. Those sentenced to confinamiento are taken to some town or district at a distance of from thirty to three hundred kilometers from the place where the crime was committed. where they may remain at complete liberty under the surveillance of the authorities—the extraordinary provision being here made that the government may assign all such to the military service as are fit therefor and may consent to such assignment. Banishment from certain places designated in the sentence may be imposed. Persons may be sentenced to public censure which shall be imposed by a court sitting with open doors; private censure, behind closed doors may also be imposed. "Arresto" mayor is served in the public prison of the district, and "arresto" menor is served in the court building of the town, or in the house of the culprit himself, if the sentence shall so declare, without his being allowed to leave the same during the entire period of the sentence. A person may be sentenced in certain cases to degradation and shall be stripped by the court bailiff of his uniform, robes of office and decorations. The stripping shall be carried out at the command of the presiding judge, who shall order it in the following manner: "Strip A. B. of his insignia and decorations, to wear which the law declares him unworthy. The law degrades him because he has degraded himself."

To illustrate the minuteness with which crimes are defined by the Spanish Code, let us consider the one crime of robbery. As with us, robbery is theft plus violence or intimidation of the person or the use of force with regard to the property itself. Severe penalties are imposed where homicide is occasioned by the robbery; or, if as a result thereof the person assaulted should become an imbecile, impotent, or blinded, or should be mutilated or detained for ransom; or where there should be the loss of an eye or any principal member of the body; or where the violence attending the crime is manifestly unnecessary or any minor deformity or disability should result to the person assaulted. The judge must impose the penalty in its maximum degree if the crime was committed in an uninhabited place and by a gang or by attacking a moving train or by entering passenger compartments or by surprising passengers in any manner within the cars; and the chief of the gang, if it should be wholly or partially armed, is to receive the next higher penalty. Malefactors who habitually travel with the gang are presumed to have been present at the commission of the crime, unless there be proof to the contrary. Distinctions are drawn between the robbery of an inhabited house and one that is uninhabited; and between public buildings and houses dedicated to religious worship and other buildings. The punishment varies with the fact whether the culprit carries arms or is without them, and also as to the value of the property stolen. The penalty is raised to the next higher degree if the culprit has been previously convicted of the same offense. Those having in their possession pick-locks or other tools specially designed to commit the crime of robbery, without satisfactory explanation, and those who manufacture such tools, are severely punished.

Let us now assume that a man employed as a janitor of a public building should, at night, being armed, break open a box within the building where he was employed and abstract therefrom property of more than 1,250 paesetas in value (a paeseta being worth twenty cents). What penalty would be imposed by the court? Article 508 of the Penal Code provides in such a case, for the imposition of the penalty of "presidio mayor in its medium degree to cadena temporal in its minimum degree." By referring to the tables in the Code we ascertain that this punishment extends from eight years and one day to fourteen years and eight months—this period of six years and eight months is to be divided, you will remember, into three equal parts, and the judge is now confronted with the necessity of determining within which of the three divisions the punishment shall be imposed. He will first search for extenuating circumstances—none such will be found. Under the case stated he will next look for aggravating circumstances and will find one in the fact that the malefactor has taken advantage of his public position as janitor, and a second in the fact that he has committed the crime at night. Under the rules previously stated, namely, that if there be only aggravating circumstances, the penalty shall be imposed in its

maximum degree, we ascertain from the table that the discretion of the judge is limited between twelve years and one day and fourteen years and eight months, the maximum degree of punishment prescribed by statute. You see, therefore, that it would be quite possible for a man to take a pencil and paper in hand and figure out within very narrow limits the punishment that would be imposed upon him for the commission of a crime, should he be acquainted with the multitudinous rules of the Code. As I said before, the judge must set forth with precision the crime committed with all of its attendant circumstances, and the conclusions of law therefrom under the statutes that govern him—thus it happens that the legality of his action is open to inspection; and if he shall have followed the law, he will be free from any imputation of passion or prejudice, since his own discretion has been controlled by the discretion of the nation as imposed in its elaborate system of statutory rules.

CONSTITUTION AND BY-LAWS

of the

STATE BAR ASSOCIATION OF UTAH

CONSTITUTION.

Article I. The name of the Association shall be The State Bar Association of Utah.

Article II. The object of the Association shall be the elevation of the standard of professional learning and integrity; to inspire the greatest degree of respect for the efforts and influence of the Bar in the administration of justice; and to cultivate fraternal relations among its members.

Article III. The officers of the Association shall be a President, a Vice-President from each Judicial District, Secretary, Treasurer, an Executive Council of five members, and a Committee on Grievances consisting of three members, which officers shall be elected annually and hold until successors are elected and accept.

Article IV. The President shall deliver an address at each regular annual meeting of the Asociation, and the duties of the President, Vice-President, Secretary and Treasurer shall be such as usually pertain to those offices respectively.

Article V. Regular meetings of the Association shall be annually held at Salt Lake City on the second Monday in January, at 7:30 p. m., at the Supreme Court Room, for the election of officers, and for addresses and discussions; also for the transaction of any other business of the Association. The President and the members of the Executive

Council and Committee on Grievances shall be elected at the annual meeting by ballot.

Special meetings may be called at any time by the Executive Council or the President, and must be called when a request signed by fifteen members of the Association is made therefor. And the notice of such special meeting shall be by publication in the daily papers of Salt Lake City, Ogden and Provo, or by personal notice sent by the Secretary to each member of the Association; in either case not less than three days' notice of the time and place of holding such meeting shall be given.

Article VI. A quorum for the transaction of business shall be twenty members.

Article VII. No person shall be admitted to membership in this Association, who is not a member of the Bar of the Supreme Court of Utah.

Article VIII. All applications for membership at the annual meeting shall be referred to the Executive Council, who shall report on the same to the Association, with their recommendation, and no person shall be admitted to membership except by a two-thirds vote of the members present. During the interval between annual meetings, applications for membership may be determined by the Executive Council. Each rember shall pay an admission fee of \$5.00, and annual dues, after the first year, of \$3.00. Any member may be expelled on a vote of a majority of the members of the Association.

Article IX. The Executive Council shall manage the affairs of the Association, subject to the Constitution and By-Laws; it shall, also, on or before the first day of May of each year designate such number of members, not exceeding six, to prepare and deliver or read, at the next annual meeting therafter, appropriate addresses or papers

upon subjects chosen and assigned by the Council, to each of such members as may be so selected for such purpose.

Article X. All addresses delivered and papers read before the Association, a copy of which is furnished by the author, shall be lodged with the Secretary. The annual address of the President, the reports of committees and all proceedings of the annual meeting shall be printed; but no other address delivered or paper read shall be printed except by order of the Executive Council.

Article XI. The Committee on Grievances shall be charged with the investigation of all complaints against members of the Association, members of the Bar and officers of the Courts, and also of all complaints which may be made to them in matters affecting the members of the legal profession, the practice of law and the administration of justice, and shall report thereon to the Association, with such recommendations as they may deem proper. The proceedings of such committee shall be secret.

Article XII. If a vacancy occurs in the office of President, the Executive Council may designate a Vice-President to fill his place. Said Council shall also fill any vacancy that may occur in the office of Secretary or Treasurer, and said Council and said Committee on Grievances may respectively fill any vacancy that may occur therein.

Article XIII. The Treasurer shall render an account annually to the Executive Council, and said Council shall report the same to the Asociation at its annual meeting.

Article XIV. The Executive Council shall cause to be printed such number of the Constitution and By-Laws of the Association, with the roll of members of the Association, as it shall deem best, not exceeing one thousand copies, and shall distribute the same to members of the Association, and to such other persons or associations, or

societies as it may deem prudent; and shall, with the proceedings of each annual meeting, print a roll of the members of the Association.

Article XV. This Constitution shall remain unalterable except by a vote of two-thirds of all members.

BY-LAWS

Section 1. The order of business at each annual meeting shall be as follows:

- 1. Opening address by President.
- 2. Report of Executive Council.
- 3. Consideration of applications for membership.
- 4. Report of Committee on Grievances.
- 5. Report of standing and special committees.
- 6. Delivering or reading of addresses and papers.
- 7. Miscellaneous business.
- 8. Election of officers.

Section II. There shall be appointed by the President and Executive Council each year, three members as delegates to the American Bar Association for that year.

Section III. There shall be a standing committee to consist of the President and four members, appointed by him at each annual meeting, on the "State of the Law," whose duty shall be to report at the annual meeting important amendments, revisions or additions to the law of the State, as developed in legislation or by judicial decisions, together with such suggestions as may seem to be necessary.

Section IV. There shall be a standing committee of ten, appointed annually by the President and Executive Council, on "Judicial Candidates and Nominations," whose duty shall be to investigate and report at the annual or

special meetings of the Association, upon the qualifications and fitness of the candidates for judicial officés, other than those of Justice of the Peace.

Section V. These By-Laws may be amended at any regular meeting by a majority vote of the members present.

LIST OF MEMBERS

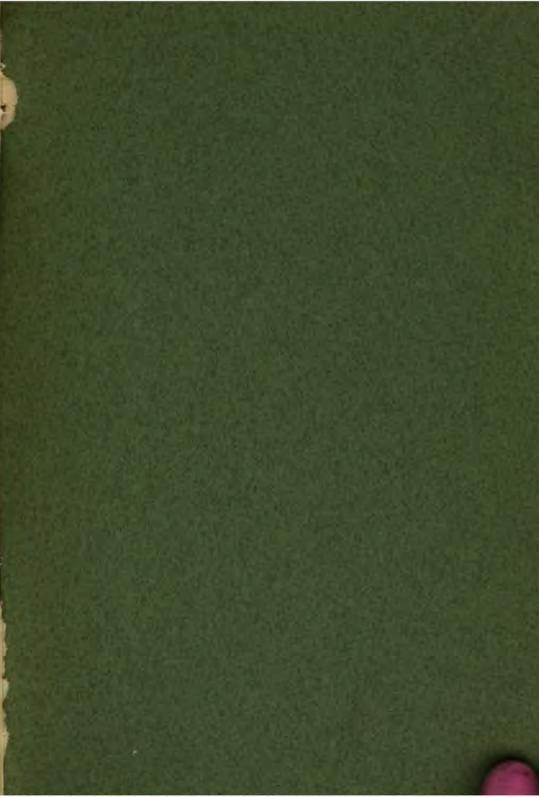
Allison, E. M., JrSalt Lake City	Moyle, Oscar WSalt Lake City
Armstrong, George G Salt Lake City	Nye, George LSalt Lake City
Backman, G. HSalt Lake City	Pearson, C. ESalt Lake City
Baldwin, CharlesSalt Lake City	Pierce, FrankSalt Lake City
Barrette, Wm. JSalt Lake City	Richards, F. SSalt Lake City
Bennett, C. WSalt Lake City	Richards, Jos. TSalt Lake City
Booth, H. ESalt Lake City	Ritchie, Morris LSalt Lake City
Bradley, Wm. M Salt Lake City	Riter, W. DSalt Lake City
Browne, T. EllisSalt Lake City	Rovle, J. CSalt Lake City
Buys, William	Russell, Samuel Salt Lake City
Critchlow, E. B Salt Lake City	Sanford, Allen TSalt Lake City
Daly, P. JSalt Lake City	Shields, HenryPark City
Gibson, Geo. JaySalt Lake City	Smith, Geo. HSalt Lake City
Henderson, H. HProvo	Smith, Grant HSalt Lake City
Henderson, H. P Salt Lake City	Snyder, W. ISalt Lake City
Houtz, D. D Provo	Stephens, Frank BSalt Lake City
Howat, AndrewSalt Lake City	Sullivan, Geo. MSalt Lake City
Hurd, J. HSalt Lake City	Sutherland, GeorgeSalt Lake City
Hutchison, W. RSalt Lake City	Sweet, F. ASalt Lake City
Ingebretsen, James Salt Lake City	Tanner, H. SSalt Lake City
Jack, C. BSalt Lake City	Tanner, Nathan, JrOgden
Jones, B. HSalt Lake City	Thomas, MathonihahSalt Lake City
Jones, Elmer BSalt Lake City	Thompson, J. WalcottSalt Lake City
Kaighn, M. MSalt Lake City	Van Cott, WaldemarSalt Lake City
Kinney, Clesson SSalt Lake City	Varian, Charles SSalt Lake City
Lawrence, Geo. NSalt Lake City	Walters, J. CLogan
Lee, E. O Salt Lake City	Warner, M. MProvo
Lee, William ASalt Lake City	Whittaker, J. JSalt Lake City
Letcher, J. RSalt Lake City	Whittemore, C. OSalt Lake City
Lewis, EugeneSalt Lake City	Willey, D. O., JrSalt Lake City
Lewis, T. DSalt Lake City	Williams, P. LSalt Lake City
McCrea, 'Wm. M Salt Lake City	Young, Le GrandSalt Lake City
McDowell, SamuelSalt Lake City	Young, Richard WSalt Lake City
Marshall, ThomasSalt Lake City	Zane, C. SSalt Lake City
Moyle, James HSalt Lake City	_

HONORARY MEMBERS

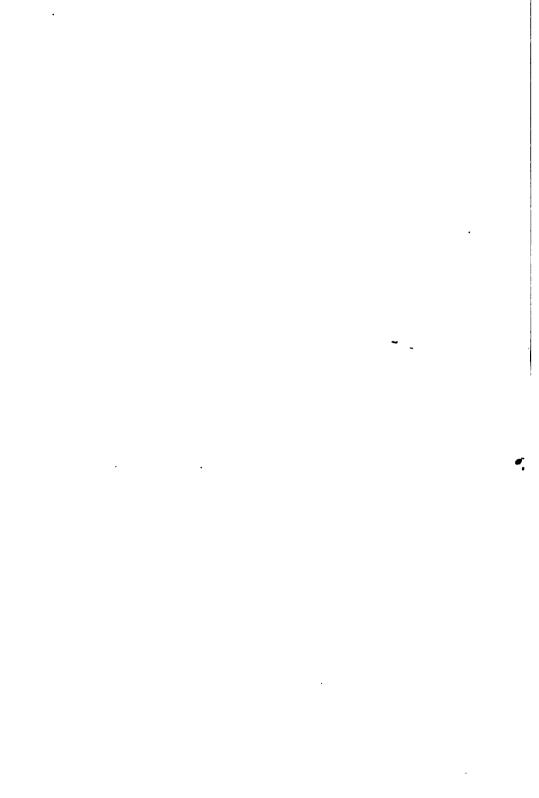
Hon. D. N. StraupSalt Lake City
Hon. Geo. W. Bartch Salt Lake City
Hon. Wm. M. McCarty. Salt Lake City
Hon. John A. Marshall. Salt Lake City
Hon. Chas. W. Morse Salt Lake City
Hon. John E. BoothSalt Lake City
Hon. W. W. MaughanLogan

Hon. J. A. Howell......Ogden Hon. T. D. Lewis.....Salt Lake City Hon. G. G. Armstrong.Salt Lake City Hon. Morris L. Ritchie, Salt Lake City Hon. Joshua Greenwood....Fillmore Hon. Ferdinand Ericksen.Mt.Pleasant

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